

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE VIVEK JAIN**

WRIT PETITION No. 11356 of 2024
RAMLAL JHARIYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WITH
WRIT APPEAL No. 2763 of 2024
SMT. JYOTI CHAKRAWARTY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

MISC. CRIMINAL CASE No. 6762 of 2024
ASHIF IQBAL KHAN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 18164 of 2024
BHISHM SINGH THAKUR
Versus
***THE EXCISE COMMISSIONER MADHYA PRADESH GWALIOR AND
OTHERS***

WRIT PETITION No. 18492 of 2024
SANJAY YADAV
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

MISC. CRIMINAL CASE No. 35204 of 2024
SATISH JAISWAL
Versus
THE STATE OF MADHYA PRADESH

MISC. CRIMINAL CASE No. 37906 of 2024
DHARMENDRA KUMAR TOMAR
Versus
THE STATE OF MADHYA PRADESH

WRIT PETITION No. 6542 of 2025***RAJESH****Versus****THE STATE OF MADHYA PRADESH AND OTHERS*****WRIT PETITION No. 23359 of 2024*****CHETAN****Versus****THE STATE OF MADHYA PRADESH AND OTHERS*****Appearance:***Shri Akhil Godha and Shri Karan Kachhwaha - Advocates for petitioner.**Shri Abhijeet Awasthy and Shri B.D. Singh - Deputy Advocate General for respondents/State.**Shri Jayant Neekhara and Shri Sanjeev Neekhara - Advocates for petitioner in WP No.11356/2024.**Shri Anuj Agarwal - Advocate for petitioner in MCRC No.6762/2024.**Shri Vivek Ranjan Pandey, Shri Vijay Shukla and Shri Alok Kumar Gupta - Advocates for petitioners in WP No.18164/2024 and WP No.6542/2025.**Shri Shivam Mishra - Advocate for petitioner in WP No.18492/2024.**Shri Durgesh Kumar Singrore - Advocate for appellant in WA No.2763/2024.**Shri B.D. Singh - Deputy Advocate General for respondents-State.**Shri Amitabh Gupta - Advocate appears to assist with permission of the Court.***JUDGMENT****(Reserved on : 06/03/2025)****(Pronounced on: 21/04/2025)*****Per: Hon'ble Shri Justice Vivek Jain***

The case in W.P. No. 11356/2024 and bunch of connected cases relate to the question of confiscation of vehicles during the pendency of the criminal trial under M.P. Excise Act 1915 where the vehicle owner may or may not be the accused in criminal case, whereas the case in W.P. No. 23359/2024 relates to same question of confiscation during pendency of the trial under the provisions of the Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 during pendency of criminal trial. Since analogous questions arise for consideration in both these batches of matters, they are being taken up and decided by this common order.

2. In W.P. No. 11356/2024, the following questions have been referred for adjudication to larger Bench of this Court vide order dated 06.05.2024 passed by the a Single Bench. The questions referred are as under:-

“(A) Whether, any articles or vehicles can be confiscated under Section 47(A) of the M.P. Excise Act, 1915 during the pendency of criminal trial initiated against the offenders before the Judicial Courts?”

“(B) Whether, the dictum laid down by the Apex Court in the matter of Madhukar Rao vs. State of M.P., (2008) 14 SCC 624 is applicable to the cases registered under Section 34(2) and the Confiscation proceedings under Section 47(A) of the Act, 1915?”

“(C) Whether, the confiscation proceedings can go on parallel to the criminal proceedings and Collector can pass the order of Confiscation irrespective to the pendency of criminal case?”

“(D) Whether, the Coordinate Benches were justified in delivering the conflicting views without referring the matter under Chapter IV Rule 8(3) of the High Court Rules, 2008 and the conflicting view in the absence of any reference can be considered as binding precedent, in view of the doctrine of stare decisis?”

“(E) Whether, writ petition can be entertained against the order of confiscation, in view of judgment of Apex Court in the matter of Whirlpool Corporation vs. Registrar of Trade Marks, (1998) 8 SCC 1 and judgment of Division Bench of this Court in the matter of Alok Kumar Choubey vs. State of M.P., (2021) 1 MPLJ 348, on the ground that Collector had no authority to pass any order of confiscation during the pendency of criminal case?”

3. W.P. 6542/2025 which is part of the same batch of petitions relating to M.P. Excise Act, 1915, in the said petition challenge is made to Constitutional validity of Section 47-A of M.P. Excise Act, 1915 and has been heard analogously with this batch of petitions, as similar issues require to be considered and adjudicated.

4. In W.P. No. 23359/2024 which relates to Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 (for short, hereinafter referred to as “Cow Progeny Act”), a Single Judge of this Court has referred the following questions for adjudication by a larger Bench vide order dated 06.09.2024.

“(1) Whether in view of the judgment of the Supreme Court in cases of Abdul Vahab (supra) (in particular para – 21 as quoted above) and Kallo Bai (supra), the confiscation proceedings under Section 11(5) of the Adhiniyam, 2004 and Rule 5 of Rules, 2012 can be initiated and prosecuted simultaneously with the criminal trial before the Judicial Magistrate First Class for the offence punishable under Section 9 of the Adhiniyam, 2010 ?

“(2) Whether the District Magistrate can adjudicate violation of Section(s) 4, 5, 6, 6A and 6B of the Adhiniyam, 2004 before conclusion

of trial by the Judicial Magistrate for offence punishable under Section 9 of the Adhiniyam, 2004 ?

(3) Whether the writ petition can be entertained against the confiscation order passed by the District Magistrate under Section 11(5) of the Adhiniyam, 2004 despite availability of equally efficacious alternate relief of appeal under Section 11A of the Adhiniyam and revision under Section 11B of the Adhiniyam, 2004 on the ground that the Collector cannot decide the violation of Sections 4, 5, 6, 6A and 6B of the Adhiniyam, 2004, until decision of the criminal court after trial for contravention of aforesaid sections?"

5. Therefore, common issues that arise in both the batches of matters are the authority of the District Magistrate or the confiscating authorities of executive to pass an order of confiscation of vehicles used for committing the offence under the said Act before conclusion of the criminal trial pending before the Court of Judicial Magistrate into the offence committed under the Act in relation to which crime, the said vehicle has been seized.

6. The reference has been necessitated because there is divergence of opinion by various benches of this Court on the issue of the authority of the Collector/ District Magistrate to confiscate the vehicle used for commission of offences under **M.P. Excise Act, 1915** (for short “**Excise Act**”) and **Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004** (for short “**Cow Progeny Act**”); that whether the Collector/District Magistrate is having authority and competence to pass confiscation order during pendency of the criminal trial before the Judicial Magistrate/Sessions Court. In one series of judgments different Single Benches have taken a view relying on the judgment of Hon’ble Supreme Court in the case of **State of M.P. and others vs. Madhukar Rao, (2008) 14 SCC 624**, that no confiscation order can be passed during pendency of criminal trial while in other series of the cases decided by various coordinate Single Benches of this Court it has been held that the said confiscation can duly take place on account of the position that the case of **Madhukar Rao (supra)** was decided in relation to the provisions of Wild Life Protection Act 1972 in which no separate mechanism for confiscation has been laid down, there is no procedure for noticing the owner of vehicle, passing a order of confiscation, appeal and revision etc. to the superior authority and

ultimately to the Court of law. It has been considered that as per Section 39(d) of the Wild Life Protection Act, 1972, all vehicles, vessels, weapons, traps or tools used for committing an offence and which have been seized under the provisions of that Act shall be the property of the State Government or of the Central Government. Therefore, applicability of the judgment in the case of **Madhukar Rao (supra)** has been doubted in various other cases on account of there being a proper procedure for passing an order of confiscation by following procedure laid down in Excise Act. Since there are two judgments in the case of Madhukar Rao, one by Full Bench of this Court, and other by the Hon'ble Supreme Court, wherein the said judgment has been affirmed, we shall refer to both respectively as **Madhukar Rao (FB)** and **Madhukar Rao (SC)**.

7. The learned Single Judge while making reference in W.P. No. 11356/2024 relating to Excise Act has raised exactly the same issue and has doubted the applicability of the judgment in the case of **Madhukar Rao (supra)** but looking to the divergent opinions of different Benches has requested for adjudication of the issue by a larger Bench, so that the matter can be settled once and for all.

8. In W.P. 23359/2024 relating to Cow Progeny Act, the learned single Judge therein also has taken note of a proper procedure being laid down under Cow Progeny Act for confiscation and further procedure of appeal and revision, etc. being laid down under the said Act and therefore, looking to the divergent views of different Benches of this Court, has requested for adjudication of the issue by the larger Bench. In the following cases the Benches of this Court have followed the dictum in the case of **Madhukar Rao (supra)**

i) Sheikh Kalim vs. State of M.P. (M.Cr.C. No.1296/2015)

ii) Suresh vs. State of M.P. (Writ Petition No.19528/2022)

iii) Akash Raikwar vs. State of M.P. and others (W.P. No.18178 of 2023)

iv) Bhaskar @ Balkishan Sonone vs. State of M.P. and others, (W.P. No.28288/2023).

v) Pankesh vs. The Collector and others, (W.P. No.29095 of 2023).

vi) Sakeel Batla Vs. State of M.P. and others (M.Cr.C. No. 1036/2021).

9. On the other hand in number of judgments, a contrary view has been taken that the judgment in the case of **Madhukar Rao (supra)** would not apply to the cases under Excise Act and Cow Progeny Act on the ground of difference of the scheme of the said enactments from the scheme of Wild Life Protection Act 1972 which was the subject matter of the adjudication in the case of **Madhukar Rao (supra)**. In this line various benches of this Court have taken the contradictory view in the following cases.

i) Danish Rayin vs. State of M.P. and others, (W.P. No.28700/2022).

ii) Vijay vs. State of M.P. and others, (M.P. No.2141/2023)

iii) Madduri Nagendra vs. State of M.P. and others, (W.P. No.21818/2023).

iv) Radha Gupta vs. State of M.P. and others (W.P. No.7695/2024)

The aforesaid cases are only some key instances of divergent views taken by the different benches of this Court.

10. Shri Vivek Ranjan Pandey, Shri Akhil Godha, Shri Jayant Neekhara, Shri Sanjeev Neekhara, Shri Anuj Agarwal, Shri Vijay Shukla and Shri Alok Kumar Gupta, Advocates for petitioners in their respective cases have vehemently argued that the view taken in the case of **Madhukar Rao (SC) (supra)** needs to be taken in the present cases also and that no different conclusion would emerge even in the cases involving Excise Act and the confiscation by executive has to wait till conclusion of trial of offence by the judicial Court. It was vehemently argued that in the case of **Madhukar Rao (SC) (supra)**, the Supreme Court has upheld the judgment of the Full Bench of this Court in the case of **Madhukar Rao Vs. State of M.P. reported in 2000(1) MPLJ 289** wherein the Full Bench of this Court has taken note of the entire legal aspects including the right to property of a person which is Constitutional right so also

right under Article 19(1)(g) of the Constitution of India which is a fundamental right vested in every citizen to carry on its/his trade, occupation or business and has ultimately held that seized property cannot become property of the State unless there is a trial and finding reached by the competent Court that the property was used for committing an offence under the Act. It is vehemently argued that though in the Wild Life Protection Act 1972 mere seizure is enough to declare it as property of Government and those provisions were being considered by the full Bench of this Court which was subsequently upheld by the Hon'ble Supreme Court but looking to the scheme of Excise Act, though there is no such automatic vesting of the seized property in the State, but practically the vesting is automatic because the defences to which the owner of the property (vehicle) otherwise is entitled to take, have not been kept open for the owner of property to take in the proceedings for confiscation to be carried out before the Collector/District Magistrate, therefore, it is argued that the case of **Madhukar Rao (SC & FB) (supra)** would squarely be applicable to confiscation under Excise Act also. In similar line the case was argued by Shri Akhil Godha, Advocate in the matter relating to Cow Progeny Act.

11. It is the case of the petitioners that the different conclusions would not arise even looking to the scheme of the Acts which are in question in the present case and arguments were raised in detail in relation to the powers of confiscation during pendency of criminal trial. Reliance has vehemently been made on the judgment of the Hon'ble Supreme Court in the case of **Abdul Vahab vs. State of M.P. reported in 2022 (13) SCC 310** so also the judgment of the Full Bench of this Court and of the Hon'ble Supreme Court in the case of **Madhukar Rao (supra)**.

12. The Constitutional validity of Section 47-A of Excise Act is also put to challenge in W.P. No. 6542/2025 on the ground that the said provision relates to deprivation of the property which is unreasonable and arbitrary because

firstly it enables parallel confiscation proceedings even prior to offence being proved in a Court of law and secondly, it does not leave appropriate defences open for the owner of the property, and therefore, the Constitutional validity of Section 47-A should also be examined and the said provision should be struck down being violative of Article 300-A and 19 (1) (g) of the Constitution of India.

13. Per contra, it was vehemently argued by learned counsel for the State that the judgment in the case of **Madhukar Rao (supra)** will not apply in the case of Excise Act and under Cow Progeny Act and further that the M.P. Excise Act comprises a complete Code in itself in the matter of confiscation, therefore, there is no automatic vesting of vehicles in the State as is being argued in the present cases. It is further contended that the basic purpose and intention to enact such laws is with two objectives, firstly to prevent repeated use of vehicles in such type of offences like environmental offences and such other offences for which special deterrent measures are required to be enacted so as to prevent such offences taking place repeatedly. It is argued that though confiscation may result in deprivation of property but that is for a lawful and constitutional purpose i.e. as a deterrent for repeated offences of the nature which cause mischief and nuisance to the society in general, like cases relating to environmental protection, food adulteration, essential commodities, wild life protection, forest protection, cow slaughter, sale and supply of spurious medicines, narcotic drugs and illicit liquor, etc. Therefore, by placing reliance on various judgments of this Court and also Hon'ble Supreme Court, it was prayed to dismiss the petitions and to hold that the confiscating authority can very well pass an order of confiscation even during pendency of criminal trial.

14. Shri Amitabh Gupta, Advocate also sought and was granted leave to address being a member of the Bar, as a legal question of larger public importance is involved in the matter. He also argued vehemently that this Court should uphold that confiscation of vehicle can take place during

pendency of criminal trial under the Excise Act and Cow Progeny Act because such offences cause mischief and nuisance to the society as a whole and provisions of confiscation of vehicles, implements, tools etc. are enacted in the concerned laws as preventive measures only to ensure that such offences do not repeatedly take place because for commission of these offences vehicles are the primary tools. By confiscating the vehicles involved in such offences, the legislature further thought it proper that it will serve as deterrent measure to prevent repeated offence of the like nature which is in public interest and to achieve the constitutional goals. Therefore, this Court should not hold that the confiscation cannot take place during pendency of criminal trial. It is further argued that most often during criminal trial the time taken for conclusion is too lengthy on account of which proper evidence would not come before the Courts of law and in most of cases there are acquittals. If the confiscation is connected with acquittal in criminal cases then in most of the cases the vehicles would not be liable for confiscation and the very purpose of enacting the provision would be frustrated and defeated, therefore, this Court should hold that the confiscation proceedings can be proceeded and concluded during pendency of criminal trial because the criminal trial is against accused of an offence whereas confiscation proceedings are against owners of the vehicles who may or may not be an accused in the trial. Therefore, confiscation proceedings may go on before the Collector/ District Magistrate even during pendency of criminal trial before the Court of law.

15. Heard.

16. The primary issue that arises for consideration in all the cases is that whether during pendency of criminal case before the Court of law, the confiscation of the vehicle used in the offence can be made by parallel proceedings to be conducted under the Excise Act or under the Cow Progeny Act. To appreciate the cases under the M.P. Excise Act, the relevant provisions of M.P. Excise Act, 1915 which give power of confiscation of seized

intoxicants, articles, implements and vehicles are provided under Section 46, 47, 47-A, 47-B, 47-C and 47-D of the Excise Act.

17. As per Section 46 and 47 the Magistrate who is trying the offence under the Excise Act has the power and authority to pass order of confiscation. Thereafter by the amendment of the year 2000, Section 47-A, 47-B, 47-C, 47-D were inserted in the Excise Act giving power of confiscation in a parallel manner to the Collector. Appeal is provided against the order of confiscation and revision lies before the Court of Sessions against the order of appellate authority. As per Section 47-D there is bar of jurisdiction of the Court to pass an order about disposal and custody of the said material once intimation of initiation of confiscation proceedings have been received from the Collector by the Court.

18. The confiscation as per Section 47-A would take place only where the quantity of liquor found at the time or in the course of detection of offence exceeds 50 bulk liters. The relevant provisions of Excise Act are as under :-

46. Liability of certain things to confiscation.— (1) *Whenever an offence has been committed which is punishable under this Act, the intoxicant, materials, still, utensils, implements or apparatus in respect of or by means of which such offence has been committed, and the receptacles, packages and coverings in which any such intoxicant materials, still, utensils, implements or apparatus is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts vessels, rafts or other conveyance used in carrying the same shall be liable to confiscation.*

(2) Any intoxicant lawfully imported, transported, manufactured, held in possession or sold alongwith, or in addition to any intoxicant liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any such intoxicant, materials, still, utensil, implements or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, rafts or other conveyance used in carrying the same, shall likewise be liable to confiscation.

47. Order of confiscation.— (1) Where in any case tried by him the Magistrate, decides that anything is liable to confiscation under Section 46, he shall order confiscation of the same :

Provided that where any intimation under clause (a) of sub -section (3) of Section 47-A has been received by the Magistrate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section (2) of Section 47-A, the Magistrate shall not pass any order in this regard.

(2) When an offence under this Act has been committed, but the offender is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto, and the evidence (if any) which he may produce in support of his claim:

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc.— (1) Whenever any offence covered by clause (a) of (b) of sub-section (1) of Section 34 is committed and the quantity of liquor found at the time or in the course of detection of offence exceeds fifty bulk litres, every officer, empowered under Section 52, while seizing any intoxicants, articles, implements, utensils, materials, conveyance etc. under sub-section (2) of Section 34 or Section 52 of the Act, shall place on the property seized a mark indicating that the same has been so seized and shall without undue delay either produce the seized property before the officer not below the rank of District Excise Officer authorised by the State Government by a notification in this behalf (hereinafter referred to as the Authorised Officer), or where having regard to its quantity or bulk or any other genuine difficulty it is not expedient to do so, make a report containing all the details about the seizure to him.

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub -section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of

detection of such offence exceeds fifty bulk litres he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal e tc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.

(3) No order under sub-section (2) shall be made unless the Collector has—

(a) sent an intimation in a form prescribed by the Excise Commissioner about initiation of proceedings for confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance, etc. to the Court having jurisdiction to try the offence on account of which the seizure has been made;

(b) issued a notice in writing to the person from whom such intoxicants, articles, implements, utensils, materials, conveyance, etc. have been seized and to any person staking claim to and to any other person who may appear before the Collector to have an interest in it;

(c) afforded an opportunity to the persons referred to in clause (b) above of making a representation against proposed confiscation;

(d) given to the officer effecting the seizure under sub -section (1) and to the person or persons who have been noticed under clause (b) a hearing.

47-B. Appeal against the order of confiscation.—*(1) Any person aggrieved by an order of confiscation passed under sub -section (2) of Section 47-A may, within thirty days of such order prefer an appeal to the Collector concerned or to any other officer authorised by the State Government by notification (hereinafter referred to as the Appellate Authority). Such appeal memorandum shall be accompanied by a certified copy of the order appealed against.*

(2) The Appellate. Authority on presentation of such memorandum of appeal, issue a notice to the appellant and to any other person who is likely to be adversely affected by the order that may be passed in appeal.

(3) The Appellate Authority after hearing the parties to the appeal, shall pass an order confirming, reversing or modifying the order of confiscation appealed against:

Provided that he may pass such order of interim nature for custody, disposal etc. or the confiscated articles during the pendency of appeal, as may appear to him just or proper in the circumstances of the case but he shall have no

power to stay the order of confiscation appealed against during the pendency of appeal.

47-C Revision before the Court of sessions against the order of Appellate Authority.— (1) Any party to appeal aggrieved by the final order by the Appellate Authority under sub-section (3) of Section 47-B may, within 30 days of such order submit a petition or revision solely on the ground of illegality of such order to the Court of sessions within the sessions division.

(2) The Court of sessions may, if it finds any illegality in the order of the Appellate Authority, confirm, reverse or modify the order passed by the Appellate Authority:

Provided that the Court of session shall have no powers to stay the order of confiscation of the order passed by the Appellate Authority during pendency of the petition for revisions before it.

47-D. Bar of jurisdiction of the Court under certain circumstances.— Notwithstanding anything to the contrary contained in the Act, or any other law for the time being in force, the Court having jurisdiction to try offences covered by clause (a) or (b) of sub-section (1) of Section 34 on account of which such seizure has been made, shall not make any order about the disposal, custody etc. of the intoxicants, articles, implements, utensils, materials, conveyance etc. seized after it has received from the Collector an intimation under clause (a) of sub-section (3) Section 47-A about the initiation of the proceedings for confiscation of seized property.

19. From a bare perusal of the aforesaid provisions of the said Act, it is seen that as per Section 47-A(2) the provision is that when the intoxicants, articles, materials, vehicles etc. are produced before the Collector or report about seizure of such materials is received by the Collector and Collector is satisfied that an offence under Section 34(1)(a) or (b) has been committed and quantity of liquor is more than 50 bulk liters, he may for reasons to be recorded in writing order confiscation of such materials and vehicles. He has also been given power to pass orders for custody of such materials and vehicles during pendency of proceedings before him.

20. On strength of such provisions in Excise Act, it is argued before us that the provisions are complete code in itself and there is proper procedure to be carried out by Collector before passing the confiscation order, he has to pass a reasoned order and appeal is provided against the order of confiscation and

revision thereafter lies before the Court of Sessions and even if Collector has committed any material irregularity in passing the confiscation order or has given an erroneous finding being a judicially untrained person as compared to a Court, then such errors of procedure and jurisdiction and law can be corrected by the Court of Sessions being the revisional authority and it cannot be inferred that errors and mistakes committed by the Collector would not be cured by the Sessions Court which entertains a statutory revision against the order of confiscation. Therefore, the rights of the owner of the vehicle are fully protected and confiscation order can duly be passed even during pendency of the trial.

21. We note that in the aforesaid provision of Section 47-A which relates to confiscation order there is no defence which is open to the owner of the vehicle that the vehicle was being used for such offence without his knowledge or connivance. When such defence has not been made open to the owner of the vehicle then looking to such provision of Section 47-A it was argued that the confiscation order would be a mere formality and it is an automatic vesting like the provisions of Section 39(1)(d) of Wild Life Protection Act, 1972 and on that ground it was vehemently argued by learned counsel for the petitioners that there is no real difference between the provisions of Wild Life Protection Act, 1972 and the Excise Act though theoretically the Excise Act may have a complete procedure of passing a reasoned order, appeal and revision thereafter.

22. Considering the aforesaid contentions, we may look towards provisions of other enactments wherein similar provisions for confiscation of seized materials, vehicles etc. have been laid down and the difference between the aforesaid provisions which have been put to interpretation by the Hon'ble Supreme Court from time to time, as compared to provisions involved herein.

23. Provisions are found in Indian Forest Act (as applicable in Madhya Pradesh) in Section 52 thereof which reads as under:-

52. Seizure of property liable to confiscation and procedure thereof.– (1)

When there is reason to believe that a forest offence has been committed in respect of any reserved forest, protected forest, village forest or forest produce, the forest produce, together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any such offence, may be seized by a Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as the 'authorised officer'):

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon receipt of report about seizure, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing such offence and a copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of Forest Circle in which the forest produce, tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer,–

(a) sends an intimation in writing about initiation of proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized and to any other person who may, in the opinion of the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of objects aforesaid for commission of forest offence.

(Vide Madhya Pradesh Act 25 of 1983, sec. 3 Substituted by Madhya Pradesh Act of 2010, sec. 6]

After sub-section 5, insert the following sub-sections, namely:-

“(6) The seized property shall continue to be under custody until confirmation of the order of the authorized officer by the Appellate Authority or until the expiry of the period for initiating “suo motu” action by him whichever is earlier, as prescribed under Section 52A.

(7) Where the authorized officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.”

[Vide Madhya Pradesh Act 7 of 2010, sec. 6.]

(Emphasis supplied)

24. It is clear from the perusal of Section 52(5) of Indian Forest Act (as applicable in Madhya Pradesh) that the person having interest in the property or from whom some property is seized, shall have a right to prove to the satisfaction of the authorized officer that such vehicles and materials were used without the knowledge or connivance of such person or his servant or agent and all reasonable and necessary precautions had been taken against the use of such objects for commission of forest offence.

25. In the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**” for short) there are no parallel proceedings for confiscation vested in the investigating agency or in the authorities of the executive. Only the Court trying offence under the said Act has the power to order confiscation in terms of Section 60 thereof which reads as under:-

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—1 [(1) *Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.*]

(2) *Any narcotic drug or psychotropic substance 2 [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance 2 [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2 [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.*

(3) *Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2 [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.*

Section 60(3) again gives a defence to the owner of the animal or conveyance that it was so used without knowledge or connivance of the owner himself and his agent and all precautions were taken against such use.

(Emphasis supplied)

26. In Customs Act, 1962 confiscation is laid down under Section 115 which reads as under:-

115. Confiscation of conveyances. (1) *The following conveyances shall be liable to confiscation:-*

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs,

(c) any conveyance which having been required to stop or land under section 106 fails to do so. except for good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer.

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal.

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be

Explanation. In this section, "market price" means market price at the date when the goods are seized.

(Emphasis supplied)

27. From perusal of Sub-section (2) of Section 115, it is seen that defence is made available to owner of the vehicle that it was used without his knowledge or connivance of the owner himself or his agent or person in charge.

28. In Imports and Exports Control Act, 1947 (since repealed and replaced by Foreign Trade Development and Regulation Act 1992) provision for confiscation was laid down in Section 4(H) which related to confiscation of conveyance, and read thus:

4H. [Confiscation of conveyance. [Inserted by Act 12 of 1976, Section 3.]

- Any conveyance or animal which has been, is being, or is attempted to be, used for the transport of any imported goods or materials which are liable to confiscation under this Act, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was, is being, or is about to be, so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use:

Provided that in the case of a conveyance or animal used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay, in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the imported goods or materials which have been, are being, or attempted to be, transported by such conveyance.]

(Emphasis supplied)

The said Act has been replaced by Foreign Trade Development and Regulation Act 1992 and as per the Rules framed therein known as Foreign Trade Regulation Rules 1993, the following has been laid down in the matter of confiscation of conveyances :-

18. Confiscation of conveyance.-

(1) Any conveyance or animal which has been, is being, or is attempted to be used, for the transport of any goods or materials that are imported and which are liable to confiscation under rule 17, shall be liable to be confiscated by the Adjudicating Authority unless the owner of the conveyance or animal proves that it was, is being, or is about to be so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in-charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use.

(2) The Adjudicating Authority shall permit redemption of the confiscated conveyance or animal used for the transport of goods or passengers for hire upon payment of redemption charges equivalent to the market value of such conveyance or animal.

(Emphasis supplied)

29. The aforesaid Section 4(H) and under the repealed Act and Rules under the new Act, both give a defence to the owner of the conveyance/vehicle that it was used without knowledge or connivance of owner himself or of his agent.

30. Confiscation provisions are there in Section 6-A and 6-B of Essential Commodities Act 1955. Section 6-B of the said Act reads as under:-

6B. Issue of show cause notice before confiscation of food grains, etc.-*[(1)] No order confiscating "[any essential commodity] package, covering, receptacle, animal, vehicle, vessel or other conveyance] shall be made under section 6A unless the owner of such [essential commodity] package, covering, receptacle, animal, vehicle, vessel or other conveyance) or the person from whom [it is seized]-*

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the "[essential commodity] package, covering, receptacle, animal, vehicle, vessel or other conveyance];

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

*[(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A **if the owner of the animal, vehicle vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.]***

[(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.]

(Emphasis supplied)

31. From perusal of Sub-section (2) of Section 6(B) it is clear that though the Collector is given a parallel power to confiscate a conveyance/vehicle but a defence has been given to the owner of the vehicle and vessel that it was being used for such offence without he or his agent having knowledge or connivance for use of such vehicle and had taken all reasonable precautions against such use.

32. The Central Goods and Services Tax, 2017 also provides for confiscation of goods and conveyances in terms of Section 130 thereof which reads as under:-

130. Confiscation of goods or conveyances and levy of penalty.——
(1) 2 [Where] any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) **uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.**

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the 3 [penalty equal to hundred per cent. of the tax payable on such goods]:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance

shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

(Emphasis supplied)

33. As per Section 130(1)(v) defence has been given to owner of the vehicle that it was used without knowledge or connivance of the owner or his agent.

34. As per M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam 1969, the power of confiscation is laid down in Section 15 which is a parallel power which is to be exercised by the Government officials of the Executive irrespective of trial before the Court of law. Section 15 reads as under:-

15. Search and seizure of property liable to confiscation and procedure therefor. [Substituted by M.P. Act No. 15 of 1987 (w.e.f. 21-11-1986).]

(1)[Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub-Inspector] or any other person authorised by the State Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with,-]

(i)stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of specified forest produce;

(ii)enter and search any place.

(2) When there is reason to believe that any offence under this Act has been committed in respect of any specified forest produce, [any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub-Inspector] [Substituted by M.P. Act No. 16 of 1990 (w.e.f. 21-8-1990).] or any person authorised by the State Government in this behalf may, seize such specified forest produce alongwith all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.

(3) Any officer or person seizing any property under this section shall place on all such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before the officer not below the rank of an Assistant Conservator of Forest authorised by the State Government in this behalf, by notification (hereinafter referred to as the authorised officer) or where it is having regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately make report of such seizure to the Magistrate having jurisdiction to try the offence on account of which seizure has been made : Provided that, when the specified forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes as soon as may be a report of the circumstances to his official superior.

(3A) [Any forest officer of a rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed, of an amount equal to double the value of such property, as estimated by such officer, of the production of the property so released, when so required, before the officer authorized to order the confiscation or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.] [Inserted by M.P. Act No. 14 of 2007.]

(4) Subject to the provisions of sub-section (6), where the authorised officer upon production before him of the specified forest produce or upon receipt of report about the seizure, as the case may be, is satisfied that offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded confiscate the specified forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other articles used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the [Officer-in-charge of Forest Circle] [Substituted for 'Conservator of Forest of the Circle' by M.P. Act No. 11 of 2009.] in which the specified forest produce has been seized.

(5) No order confiscating any property shall be made under subsection (4) unless the authorised officer,-

(a) sends an intimation in forms prescribed about initiation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer or person effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on the date to be fixed for such purpose.

(5A) [When the authorised officer having the jurisdiction over the case is himself involved in the seizure of investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.] [Inserted by M.P. Act No. 14 of 2007.]

(6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act.

(6A) [The seized forest produce or any other property, if ordered to be released by the authorised officer, shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating "suo motu" action by him, whichever is earlier, as specified under Section 15-A.] [Inserted by M.P. Act No. 14 of 2007.]

(Emphasis supplied)

35. As per Section 15(6) of the said Adhiniyam quoted above, provision has been carved out that the vehicles or conveyance or the material were used without his knowledge or connivance and that he or his agent had taken due care and precaution to prevent such involvement of the vehicle.

36. On the other hand, there are two enactments wherein we could find that the said defence of lack of knowledge and connivance has not been made open to the owner. The first is Drugs and Cosmetics Act, 1940 in which section 31 relates to confiscation of vehicle which is as under:-

“31. Confiscation. —

[(1)] Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug 6 [or cosmetic] in respect of which the contravention has been made shall be liable to confiscation 7 [and if such contravention is in in respect of—

[(i) manufacture of any drug deemed to be misbranded under section 17, adulterated under section 17A or spurious under section 17B; or]

(ii) 9 [manufacture for sale, or for distribution, sale, or stocking, or exhibiting or offering for sale,] or distribution of any drug without a valid licence as required under clause (c) of section 18,

any implements or machinery used in such manufacture, sale or distribution and any receptacles packages or coverings in which such drug is contained and the animals, vehicles, vessels or other conveyances used in carrying such drug shall also be liable to confiscation].

[(2) Without prejudice to the provisions contained in sub-section (1), where the Court is satisfied, on the application of an Inspector or otherwise and after such inquiry as may be necessary that the drug or cosmetic is not of standard quality 11[or is a 9 [misbranded, adulterated or spurious drug or misbranded or spurious cosmetic,] such drug or, as the case may be, such cosmetic shall be liable to confiscation.

37. The second such enactment was the Opium Act 1878 (now replaced by NDPS Act 1985), wherein as applicable to Madhya Bharat, there was a provision for confiscation empowering the Court trying the offence, to pass order for confiscation in the following manner as provided in Section 11 (d) :-

"S. 11. In any case in which an offence under Sections 9, 9A, 9B, 9C, 9D, 9E, 9F and 9G has been committed, the property detailed herein below shall be confiscated :-

xx

xx

xx

(d) the receptacles, packages and coverings in which any opium liable to confiscation under this Section is found, and the other contents (if any) of the receptacle or package in which such opium may be concealed, and the animals, carts, vessels, rafts and conveyances used in carrying it."

38. In the aforesaid enabling provisions of confiscation in the two provisions mentioned above, though no defence was made available to the owner of the vehicles or vessels that vehicle was used without his knowledge or connivance but the power of confiscation is restricted and it is restricted in the manner that power lies only with the Court trying the offence and undisputedly the said confiscation will take place only once a person has been convicted by the trial Court and not before that and all findings on all aspects of the offence would be before the Court before it orders confiscation at conclusion of trial.

39. Under the Wild Life Protection Act which was subjected to interpretation by the Full Bench of this Court and upheld by the Hon'ble Supreme Court in the case of **Madhukar Rao (FB & SC)**, Section 39(1)(d) thereof declares that any vehicle, vessel, trap or tool that has been used for committing an offence and has been seized under the provisions of Act shall be property of the Central Government or the State Government as the case may be. Section 39 of the Wild Life Protection Act is as under:-.

39. Wild animals, etc., to be Government property.—(1) Every—

*(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or 1 [bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed 2*** or by mistake; and*

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.] shall be the property of the State Government, and, wheresuch animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat 4 [derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the, nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

(4) Where any such Government property is a live animal, the State Government shall ensure that it is housed and cared for by a recognised zoo or rescue centre when it cannot be released to its natural habitat.

(5) Any such animal article, trophy or uncured trophy or meat derived from any wild animal, as referred to in sub-sections (1) and (2) may be disposed of by the State Government or the Central Government, as the case may be, in such manner as may be prescribed by the Central Government:

Provided that such disposal shall not include any commercial sale or auction and no certificate of ownership shall be issued for such disposal.]

(Emphasis supplied)

40. It was vehemently argued before us by relying on the said provision that since in the Wild Life Protection Act there is no parallel mechanism of adjudication and appeal & revision against such adjudication therefore, the judgment in the case of **Madhukar Rao (supra)** would not apply in this case and the Full Bench as well as Hon'ble Supreme Court had

passed the orders in view of the provisions of the said Act which do not provide for any mechanism of adjudication by the Collector/District Magistrate and appeal and revision against such confiscation order.

41. From the aforesaid legislative scheme, one thing is clear, firstly that wherever executive has been given parallel right to confiscate the vehicles, tools, receptacles, boats etc. used in the commission of offence, then a defence has been kept open for the owner of the vehicle and material that it was used without his knowledge or connivance and that neither he nor his agents had such knowledge or connivance and had taken all due care and precautions for the same. Only enactments wherein such defence is not made open is Drugs and Cosmetics Act, 1940 and the now-repealed Opium Act 1878. However, in the said enactments confiscation can take place only on orders of the Criminal Court trying the offence and undisputedly, after conviction by the Court of law.

42. In our opinion, if confiscation takes place without the owner of the vehicle having a defence available with him that the vehicle was used without his knowledge or connivance and that he and his agents had taken all care and precautions to prevent such use of vehicle, then the confiscation would be a mere formality and though a power of adjudication has been given to the Collector but that power is only a cosmetic power and not a real power. Once the Collector will not have authority to take defence of the owner in consideration that vehicle was used without his knowledge or connivance, then passing of confiscation order would be a mere formality to be carried out by the Collector and practically mere seizure would amount to consequences being followed of passing an order of confiscation, though theoretically it may not be so.

43. If such a power to pass order for confiscation without considering the defence of the owner pleading lack of knowledge or connivance, is given to the Court trying the offence, then, in our considered

opinion, it would have different colour. This is because the Court would have tried the entire offence, and all facts would have come before the Court during trial, that what was the role of which of the accused, how the material was placed on the vehicle/conveyance and how the vehicle came in possession of the owner, that whether the vehicle was stolen, taken on hire, or simply loaned from owner on some pretext, or owner had knowledge of the vehicle being used in such a manner for illegal purposes. When all the facts would be before the Court during trial, then the Court will consider all such facts, though no specific defence is provided. In those cases, the construction of the words may be made so as to remove the absurdity. It was held by the Hon'ble Supreme Court in the case relating to Opium Act 1878, in the case of ***State of M.P. v. Azad Bharat Finance Co.***, reported in AIR 1967 SC 276 that the Court would consider all the relevant factors and then take a decision whether to confiscate the vehicle or not. The Hon'ble Supreme Court held so in the following manner :-

5. In our opinion, the High Court was correct in reading Section 11 of the Madhya Bharat Act as permissive and not obligatory. It is well settled that the use of the word "shall" does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word "shall" occurs and the other circumstances. Three considerations are relevant in construing Section 11. First, it is not denied by Mr Shroff that it would be unjust to confiscate the truck of a person if he has no knowledge whatsoever that the truck was being used for transporting opium. Suppose a person steals a truck and then uses it for transporting contraband opium. According to Mr Shroff, the truck would have to be confiscated. It is well recognised that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence, (vide Tirath Singh v. Bachittar Singh [(1955) 2 SCR 457 at 464]).

7. Thirdly, if the meaning suggested by Mr Shroff is given, Section 11(d) of the Madhya Bharat Act may have to be struck down as imposing unreasonable restrictions under Article 19 of the Constitution. Bearing all these considerations in mind, we consider that Section 11 of the Madhya Bharat Act is not obligatory and it is for the court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case.

44. As already considered by us above, when the confiscating authority would be the Court trying the offence, then all the facts shall be

before the Court at the time of confiscation and the Court can take an appropriate decision whether to pass order for confiscation or not. The same power is given in section 46 and 47 of the Excise Act to the trial Court trying the offence, and though defence of lack of knowledge and connivance is not given, but when the Court would have tried the offence, it would have all the facts before it, and can pass an appropriate order for confiscation or otherwise. That power would be proportionate and reasonable. However, in the present case, what is under challenge is, power given to Executive (and not to Trial Court trying the criminal offence) to pass order for confiscation even during pendency of trial, and not opening the defence of lack of knowledge and connivance to the owner of the vehicle. The Constitutionality and proportionality of the provisions have to be seen from this angle.

45. This Court cannot lose sight of instances which were placed before counsel for the State during the course of arguments and asked that whether in such cases the vehicle owner or his agents can be presumed to be having any connivance in the offence, and if that is not so then if such defence is not made available to such vehicle owners then the hearing of the person or owner by carrying out parallel confiscation proceedings would be a mere formality, which the counsel for the State was unable to controvert. Whether in such cases, would the confiscation of the vehicle not be utterly illegal and oppressive to owners/operators of the Cabs, Buses, Train, Aeroplane, etc. Such instances are as under :-

- a.** A passenger boards a public bus with two-three large suitcases containing more than 50 bulk liters of liquor.
- b.** A person books a cab through a mobile application like Ola or Uber and boards the cab with two-three such large suitcases containing contraband liquor.
- c.** A person boards a train with such contraband material.
- d.** Lastly, a person succeeds in sneaking in some contraband on a commercial flight.

46. We are not oblivious of the menace of local smuggling and inter State smuggling of stolen liquor, country made liquor and spurious liquor, which violate the provisions of Excise Act and tends to hamper regulatory regime of supply of liquor and in some cases, may make liquor unfit for human consumption available to public. However, on one hand the menace has to be curbed but it has to be curbed in a lawful and reasonable manner and not in unreasonable manner by framing an unconstitutional and disproportionate law. By not opening the defence of knowledge to the owner of the vehicle and giving right to the executive to pass an order of confiscation even before conviction in the Court of law by the offender and the owner of the vehicle may or may not be an accused in the offence, then it would amount to a travesty of justice and deprivation of right to property of the owner violating Article 300-A and if the vehicle is used for business of hire carried out by the owner then it also amounts to violation of his right to trade and business under Article 19(1)(g) of Constitution of India, as well is a disproportionate legislation.

47. We are fortified in our reasoning by the provisions contained in Drugs and Cosmetics Act, 1940 which though do not open such defence to the owner of the vehicle and material but restrict the power of confiscation to be exercised only by the Court of law, undisputedly, upon conviction recorded by the Court of Law. Similar were the provisions of Opium Act 1878 (now repealed).

48. Recently, in a case involving NDPS Act, the Supreme Court in the case of **Bishwajit Dey v. State of Assam, 2025 SCC OnLine SC 40**, has dwelled on the issue of confiscation under the NDPS Act during pendency of criminal case which we will discuss in succeeding paras.

49. Learned counsel for the State had vehemently relied on judgment in the case of **Divisional Forest Officer vs. G.V. Sudhakar Rao reported in (1985) 4 SCC 573** and submitted that the Hon'ble Supreme Court in the aforesaid case has upheld that parallel powers can very well be

vested in the officers of the executive to pass orders for confiscation of seized vehicle etc. during pendency of criminal trial and such parallel proceedings cannot be held to be unauthorized in any manner. The said issue is no longer *res-integra* and we have not also dwelled upon the constitutionality or legality of the provisions from the angle of parallel powers having been vested in the Collector to order confiscation of the vehicle/conveyance alleged to be used in excise offence, but from the angle of limited defences available to owner of the vehicle before such authority of the executive.

50. The Hon'ble Supreme Court in the case of **G.V. Sudhakar Rao (supra)** has held that the Forest Department may decide to prosecute the accused and confiscation may be carried out pending criminal trial and there is no illegality in the same. However, one very important aspect, which is to be considered herein that the said judgment was in respect of provisions of Andhra Pradesh Forest Act, 1967. The Hon'ble Supreme Court in the aforesaid case has discussed in detail the provisions of Andhra Pradesh Forest Act, 1967 and as per Section 2-C of the said Act, it has been provided that no order of confiscation of any tool, rope, boat or vehicle etc. shall be made once the owner proves to the satisfaction of the Authorized Officer that the vehicle was used in carrying the property without the knowledge or connivance of himself or his agent and that all reasonable and necessary precautions were taken against such use. The relevant Section 44 (2-C) is as under :-

*“(2-C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made **if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.**”*

(Emphasis supplied)

51. The situation therefore, again comes down to the position where an owner is having a right to take a defence of he himself or his agent not having knowledge of use of vehicle or connivance in the offence and having taken precautions to prevent the misuse of such vehicles. As we have already discussed above, once this defence is available to the owner, then parallel proceedings can very well go on. Otherwise, analogy can be drawn from Drugs and Cosmetics Act, 1940 that confiscation cannot be ordered and till a finding is reached in criminal trial that vehicle was also involved in the offence and when such trial is already conducted by the Court which also has powers of confiscation, then there is no rationale for vesting power of confiscation in some other authority. Such power is already there in Section 47 of the Excise Act of Madhya Pradesh with the Trial Court.

52. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of **State of M.P. vs. Kallo Bai, (2017) 14 SCC 502**. While going through the aforesaid judgment, we find that though the Supreme Court has held that parallel confiscation proceedings under Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 can go on, but the Supreme Court has considered in para 22 thereof that defence is available to the owner of the vehicle to prove that they took all reasonable care and precautions as per Section 15(5) of the Adhiniyam and that the offence was committed without their knowledge or connivance. The Supreme Court has held as under:-

*“22. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the authority concerned to confiscate the articles, as mentioned thereunder, even before the guilt is completely established. This power can be exercised by the officer concerned if he is satisfied that the said objects were utilised during the commission of a forest offence. **A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.**”*

(Emphasis supplied)

Therefore, the case of **Kallo Bai (supra)** which was the sheet anchor of submissions of the State, actually turns the tables against the State, and does not help the State at all.

53. The next case relied by the State was the case of **Mustafa vs. State of U.P. and others (2021) 16 SCC 474**. The said case relates to confiscation of seized material under U.P. Excise Act, 1910. In the aforesaid enactment of State of U.P., there is clear provision in Section 72(5)(b) that the owner of the vehicle has a right to prove before the Collector that the contraband goods were used without his knowledge or connivance and he and his agent had taken all precautions against such use. The relevant provision is as under:-

“(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—

(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.

(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 incharge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.”

(Emphasis supplied)

Therefore, in this case also the enactment which was put to interpretation of the Hon’ble Supreme Court had the right of defence of lack of knowledge and connivance available to the owner of the vehicle, which is not there in Excise Act herein.

54. Learned counsel for the State has also vehemently relied on the judgment of the Hon’ble Supreme Court in the case of **State of West Bengal**

vs. Sujit Kumar Raha, (2004) 4 SCC 129. However, upon a closer scrutiny we find that the aforesaid judgment is in fact, near to our conclusion, then to the interpretation suggested by the State. In para 21 of the aforesaid judgment, the Hon'ble Supreme Court considered the basic objective of purposes of such provisions, which are engrafted with laudable object to preserve national wealth or to prevent ecological damage or such other laws, which are framed in the interest of society at large or to protect environment or public order, public health etc. However, in para 26 of the aforesaid judgment, the Hon'ble Supreme Court while considering the provisions of Forest Act, 1927 as amended in State of West Bengal, held that opportunity has to be granted to the owner of the vehicle so as to enable him to show cause that the same has been used in the alleged crime without his knowledge or connivance and that necessary precautions were taken for that purpose, for which provisions are there in Section 59-A(2) of the Indian Forest Act, 1927 as applicable in State of West Bengal. The Supreme Court has held as under:-

*“26. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof **an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefore have been taken.**”*

(Emphasis supplied)

55. Learned counsel for the State and Shri Amitabh Gupta, Advocate were unable to bring to the notice of this Court any single provision where confiscation can be ordered prior to conviction by carrying

out parallel proceedings by an authority of the State (and not criminal Court seized of trial) and the defence of lack of knowledge and connivance is not made available to owner of the vehicle, nor any judgment of the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has held that confiscation can be ordered prior to conviction in any such enactment wherein defence has not been made available to owner of the vehicle in parallel proceedings.

56. In the case of **Abdul Vahab (supra)**, the Hon'ble Supreme Court was considering the provisions of Cow Progeny Act. In the aforesaid case, the Hon'ble Supreme Court though upheld that parallel proceedings for confiscation can be carried out under the said act, but acquittal of the accused in criminal trial has been held to be a relevant factor and once acquittal is recorded in criminal case, therefore, it was held that the confiscation order is required to be set aside. It is interesting to note that in the aforesaid judgment passed by the Hon'ble Supreme Court, the earlier judgments of the Supreme Court in the case of **Madhukar Rao (both FB & SC) (supra)** and **Kallo Bai (supra)**, having contradictory views were both taken into consideration. However, we have already held about that even the case of **Kallo Bai (supra)** does not help the State in the present case, because in that case the provisions were different and defence was made available to the owner, which is not there in Excise Act. The Hon'ble Supreme Court in the case of **Abdul Vahab (supra)** held as under:-

“16. We find support for the above view, from the ratio in State of M.P. v. Madhukar Rao [State of M.P. v. Madhukar Rao, (2008) 14 SCC 624 : (2009) 2 SCC (Cri) 1140] , wherein this Court while advertng to the provisions of another legislation i.e. the Wild Life (Protection) Act, 1972 opined that the power of the Magistrate to order interim release of confiscated vehicle under Section 451CrPC, is not affected. The Court reasoned that withdrawal of the power of interim release conferred on the authorities under Section 50(2), cannot be construed to mean a bar on the powers of the Magistrate under Section 451CrPC. It was next noted that a clear intention to the contrary can be found in the Act in Section 50(4) under which, any person detained, or things seized shall be taken before a

Magistrate to be dealt with according to law (and not according to the provisions of the Act).

17. Pertinently, State of M.P. v. Madhukar Rao [State of M.P. v. Madhukar Rao, (2008) 14 SCC 624 : (2009) 2 SCC (Cri) 1140] affirmed the decision of the High Court in Madhukar Rao v. State of M.P. [Madhukar Rao v. State of M.P., 1999 SCC OnLine MP 322 : (2000) 1 MP LJ 289] , wherein D.M. Dharmadhikari, J., writing for the Full Bench, opined that the provision of Section 39(1)(d) of the Wildlife (Protection) Act, 1972, providing for absolute vesting of seized property with the State Government, without a finding by the competent court that the property was being used for the commission of an offence, runs afoul of the constitutional provisions. It is succinctly observed [Madhukar Rao v. State of M.P., 1999 SCC OnLine MP 322 : (2000) 1 MP LJ 289] in para 18 : (Madhukar Rao case [Madhukar Rao v. State of M.P., 1999 SCC OnLine MP 322 : (2000) 1 MP LJ 289] , SCC OnLine MP)

“18. ... If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of clause (d) of Section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation clause (d) of Section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business.”

18. By reason of an order of confiscation, a person is deprived of the enjoyment of his property. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, to deprive any person of their property, it is necessary for the State, inter alia, to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest.

19. At this stage, we may usefully refer to this Court's opinion in State of W.B. v. Sujit Kumar Rana [State of W.B. v. Sujit Kumar Rana, (2004) 4 SCC 129 : 2004 SCC (Cri) 984] . Here it was emphasised on the need to maintain balance between statutes framed in public interest such as the Forest Act, 1927 (and the relevant insertions under W.B. Act 22 of 1988) and the consequential proceedings, depriving a person of his property, arising therefrom. It was accordingly observed that “commission

of an offence” is one of the requisite ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically. The relevant passage is reproduced below : (SCC pp. 138-39, para 26)

“26. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorised officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorised officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken.”

20. Insofar as the submission of the State Counsel that the burden of proof is on the truck owner in the process of confiscation, we must observe that Section 13-A of the 2004 Act, which shifts the burden of proof, is not applicable for the confiscation proceedings but for the process of prosecution. By virtue of Section 13-A of the 2004 Act, the burden on the State authority to legally justify the confiscation order, cannot be shifted to the person facing the confiscation proceeding. The contention to the contrary of the State's counsel, is accordingly rejected.

21. In the present case, the appellant's truck was confiscated on account of the criminal proceedings alone and therefore, under the applicable law, the vehicle cannot be withheld and then confiscated by the State, when the original proceedings have culminated into acquittal. It is also not the projected case that there is a likelihood that the appellant's truck will be used for committing similar offence.

22. It should be noted that the objective of the 2004 Act is punitive and deterrent in nature. Section 11 of the 2004 Act and Rule 5 of the M.P. Govansh Vadh Pratishedh Rules, 2012, allows for seizure and confiscation of vehicle, in case of violation of Sections 4, 5, 6, 6-A and 6-B. The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6-A and 6-B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the criminal

prosecution, the judgment given in the criminal trial should be factored in by the District Magistrate while deciding the confiscation proceeding.

23. In the present case, the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the appellant's truck when he is acquitted in the criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300-A. Therefore, the circumstances here are compelling to conclude that the District Magistrate's order of confiscation (ignoring the trial court's judgment of acquittal), is not only arbitrary but also inconsistent with the legal requirements."

57. From the aforesaid, it is clear that the Hon'ble Supreme Court even though upheld that parallel proceedings can be carried out, but further held that if order of acquittal is passed, then confiscation would amount to arbitrary deprivation of property and violates the right guaranteed to person under Article 300-A of the Constitution of India. The provisions of Cow Progeny Act are being discussed in detail later on in this judgment.

58. We may also take note of the recent judgment of the Supreme Court in the case of **Bishwajit Dey (supra)** wherein the Hon'ble Supreme Court has very recently considered the law relating to confiscation of vehicles and other material during pendency of criminal trial. This case was in relation to NDPS Act, wherein no parallel mechanism is laid down for confiscation of vehicles etc. during trial. However, the basic objectives of seizure so also in what cases the owner of vehicle would be made as accused and otherwise, etc. were all considered in detail by the Supreme Court.

59. In the aforesaid case, the Supreme Court held that Courts will lean towards a construction of statute, which would produce a just result rather than absurd or unjust result. The Supreme Court further considered an example that if an accused is carrying heroine in an aeroplane then whether the entire aeroplane would be seized till the trial is over and held that in such cases, the Courts should consider releasing the vehicle on interim custody. It was further held in the said case in para 29 that seizure of contraband can take place from a conveyance in broadly four circumstances as under:-

(i) When the owner of the vehicle is the person from whom the possession of contraband is recovered.

(ii) When the contraband is recovered from the possession of the agent of the owner like driver or cleaner.

(iii) When the vehicle was stolen by the accused and contraband is recovered from such stolen vehicle.

(iv) Where contraband is seized/recovered from a third-party occupant of the vehicle without owner's knowledge and connivance.

60. The Hon'ble Supreme Court held that in the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused while in third and fourth scenarios, the owner of the vehicle and/or his agent would not be arrayed as an accused.

61. The Full Bench of this Court in case of **Madhukar Rao (FB)** (*supra*) reported in **2000(1) MPLJ 289** had the occasion to consider the provisions of Wild Life (Protection) Act, 1972 and the Full Bench held that before confiscation by a Court of law declaration of property being a property of the State or the Central Government would amount to illegal deprivation of property and encroachment on the fundamental rights of a citizen under Article 19(1)(g) of the Constitution of India to carry on his trade, occupation or business. The Full Bench has held as under:-

“17. If the interpretation, as has been sought to be put on behalf of the State on Clause (d) of Sub-section (1) of Section 39, is accepted, every property mentioned therein including a vehicle seized merely on accusation or suspicion would become property of the State and that would be the result even though in the trial ultimately the Magistrate finds that no offence has been committed and acquits the accused. In our considered opinion the property seized under Section 50 of the Act from an alleged offender cannot become property of the State under Clause (d) of Section 39(1) unless there is a trial and a finding reached by the competent Court that the Property was used for committing an offence under the Act. If the seizure of a property was enough to declare it as the property of the Government, there was no necessity to provide under Sub-section (2) of Section 51 that on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of the offence would be forfeited to the State Government. We do not find any dichotomy or conflict in the provisions under Section 39(1)(d) and Section 51(2) of

the Act. Properties including vessel can be seized on accusation of commission of an offence under the Act and if the offender is available and is arrested, on proof of his guilt, the property seized from him and used in commission of the offence is liable to forfeiture to the State under Section 51(2) of the Act. Similarly every property seized and is held to have been used for committing an offence by competent Court, whether the offender is available or not for punishment, would be declared to be the property of the State by virtue of the provisions contained under Section 39(1)(d) of the Act. We find that Section 39 contained in Chapter-V is sort of a residuary provision to make all properties seized and found to be used in commission of an offence as properties of the State Government irrespective of the fact whether they are liable to forfeiture at the conclusion of the trial under Sub-section (2) and Section 31 of the Act. A situation can be envisaged where the offence is proved to have been committed but the owner of the property or the offender himself is not available for prosecution. In that situation by virtue of Clause (d) of Section 39 of the Act the property would become the property of the State without any requirement of passing an order of forfeiture in a trial by the Criminal Court in accordance with Sub-section (2) of Section of the Act.

18. Examination of the provisions contained in Section 54 providing for power to compound offences under the Act also leads to the same conclusion that every property seized irrespective of proof of commission of the offence and finding in that respect by the Criminal Court, would not become property of the State. Section 54 empowers the Authorities to compound the offences and release the seized properties in favour of the person suspected of the commission of the offence. If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of Clause (d) of Section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation Clause (d) of Section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business. The power thus would be exercised by an Executive Officer and without any proof of commission of an offence. Such arbitrary and uncannalised powers cannot be allowed to any Executive Authority. That would be against basic structure of the Constitution. The Constitution envisages trial of offences by an independent judiciary. An

interpretation which would render Clause (d) of Section 39(1) to be unconstitutional has to be eschewed and interpretation which makes it constitutional should be preferred. See the following observations of the Supreme Court in Kedarnath v. State of Bihar (AIR 1962 SC 955) :

"It is well settled that if certain provisions of law, construed in one way, would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

62. The Full Bench held that the provisions of Wild Life (Protection) Act amount to vesting of property on mere seizure. In this case before us, though technically and theoretically the provisions of Excise Act do not provide for automatic vesting of seized property in the State and a confiscation order is required to be passed but by not giving right to the owner to raise defence of vehicle being used without his knowledge or connivance and he and his agents having taken due care and precautions before the vehicle was used in such manner, then the provisions of hearing and adjudication by the Collector even before trial is concluded by the Court, are mere formality and are not real provisions but are only cosmetic provisions. Therefore, the said provisions are practically no different from the provisions of Wild Life Protection Act, 1972 which provide for automatic vesting of seized property in the State or Central Government.

63. The aforesaid judgment in the case of **Madhukar Rao (Full Bench)** was tested by the State Government before the Hon'ble Supreme Court in the case of **State of M.P. Vs. Madhukar Rao** reported in **(2008) 14 SCC 624**. The Supreme Court examined the relevant provisions of Wild Life (Protection) Act, 1972 and the amendment carried out therein and ultimately the Supreme Court held that the seized property becoming a Government property would come into play only after a Court of competent jurisdiction finds the accusation and allegations made against the accused true and records a finding that seized articles were infact used in the commission of offence. The Supreme Court has held as under:-

“23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial.”

64. The concept of property in relation to Article 300-A was explained in detail by the Hon'ble Apex Court in the case of ***Jilubhai Nanbhai Khachar vs. State of Gujarat, 1995 Supp (1) SCC 596*** in the following terms :-

*42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. **Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law.** In Ramanatha Aiyar's *The Law Lexicon*, Reprint Edn., 1987, at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is*

indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land. In Dwarkadas Shrinivas case [1950 SCC 833 : 1950 SCR 869 : AIR 1951 SC 41] this Court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300-A.

(Emphasis supplied)

65. It is now settled in law that Constitutional rights are not absolute, and even the fundamental rights under Article 19(1) can be subject to limitations under Article 19 (6) which is as under :-

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The exercise which, therefore, is to be undertaken in these cases relating to constitutional validity of Section 47-A, is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

66. The law relating to examining a statute from the touchstone of proportionality was considered in detail by the Constitution Bench of Hon'ble Supreme Court in the celebrated judgement of **Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353**. It was held as under :-

*62. It is now almost accepted that there are no absolute constitutional rights [Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are: (a) Right to human dignity which is inviolable, (b) Right not to be subjected to torture or to inhuman or degrading treatment or punishment. Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, Proportionality: Constitutional Rights and Their Limitation (Cambridge University Press 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. **Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by***

eliminating the “losing” facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a “constructive tension”. It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context.

63. *In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of “proportionality”, which is a proper criterion. **To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary.** This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R. v. Oakes* [*R. v. Oakes*, (1986) 1 SCR 103 (Can SC)] , in the following words (at p. 138):*

“To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be “of” sufficient importance to warrant overriding a constitutional protected right or freedom ... Second ... the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves “a form of proportionality test...” Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be ... rationally connected to the objective. Second, the means ... should impair “as little as possible” the right or freedom in question ... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.”

64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression “reasonable restriction” seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression “reasonable” connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see P.P. Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see Mohd. Hanif Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731 : 1959 SCR 629]). In M.R.F. Ltd. v. State of Kerala [M.R.F. Ltd. v. State of Kerala, (1998) 8 SCC 227 : 1999 SCC (L&S) 1] , this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

(1) The directive principles of State policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise.

(Emphasis supplied)

67. We, when test the impugned Section 47-A on the touchstone of principle of proportionality, see that the social and public interest projected before us is to carve out a preventive and deterrent measure to curb illegal smuggling of liquor and menace of spurious liquor. There is no general prohibition on liquor in Madhya Pradesh, it being a obnoxious trade carried out by the State under authority and license granted by the State to its contractors at regulated prices and unlicensed liquor amounts to loss of revenue to State apart from harming the society inasmuch supply becomes unregulated or at extreme end, there may be grave cases of spurious liquor or one unfit for human consumption, for which different provisions are incorporated in Excise Act, inviting very heavy penalties and sentences. However, as already noted by us above, though technically and theoretically the provisions of Excise Act do not provide for automatic vesting of seized property in the State and a confiscation order is required to be passed but by not giving the owner right to raise defence of vehicle being used without his knowledge or connivance and he and his agents having taken due care and precautions before the vehicle was used in such manner, then the provisions of hearing and adjudication by the Collector even before trial is concluded by the Court, are mere formality and are not real provisions but are only cosmetic provisions.

68. We have also taken note of the position that when the confiscating authority would be the Court trying the offence, then all the facts shall be before the Court at the time of confiscation and the Court can take an appropriate decision whether to pass order for confiscation or not. The same power is given in section 46 and 47 of the Excise Act to the trial Court trying the offence, and though defence of lack of knowledge and connivance is not given, but when the Court would have tried the offence, it would have all the facts before it, and can pass an appropriate order for confiscation or otherwise. That power would be proportionate and reasonable. However, in the present case, what is under challenge is, power given to Executive (and

not to a judicial authority i.e. Trial Court) to pass order for confiscation even during pendency of trial, and not opening the defence of lack of knowledge and connivance to the owner of the vehicle. This power, in our considered opinion, does not amount to a valid power within the limits of authority set out under Article 19 (6) of the Constitution of India, and amounts to giving away a disproportionate power to the Executive wing of the State, violating the fundamental right guaranteed by Article 19(1)(g) and Constitutional right, conferred by Article 300-A, and is therefore, liable to be interfered by this Court. It being a disproportionate legislation violating Constitutional provisions, Section 47-A of the M.P. Excise Act 1915 deserves to be and is **hereby declared *ultra-vires* Articles 19(1)(g) and 300-A of the Constitution of India**. As a necessary consequence thereto, Section 47-D would become inoperative in all cases where confiscation orders have not been passed as yet, having rendered superfluous.

69. The judgment of the Full Bench and of the Hon'ble Supreme Court in the case of **Madhukar Rao (supra)**, as we have already held above, would be relevant to the scheme of Excise Act also because here the defence of lack of knowledge and connivance is not available to the owner of the vehicle. Learned counsel for the State had vehemently relied on the judgment of the Full Bench of this Court in the case of **Shrish Agrawal Vs. State of M.P. and another** reported in **2003 ILR (MP) 579** by which the Full Bench of this Court upheld the constitutionality of vires of Section 47-A to 47-D of Excise Act. We have found the said judgement to be *per incuriam*, for the reasons being set out infra.

70. We have gone through the said judgment in case of **Shrish Agrawal (supra)**. On one hand this judgment was vehemently relied by the State and on the other hand this judgment was sought to be distinguished by the counsel for the petitioners on the ground that this was rendered later to the judgment of the Full Bench in the case of **Madhukar Rao (FB) (supra)** and **Madhukar Rao (FB)** has not been taken into consideration. Further that

once **Madhukar Rao (FB)** has been affirmed by the Supreme Court therefore, this judgment of Full Bench in case of **Shrish Agrawal (supra)** has to give way to the proposition of law as held in the case of **Madhukar Rao (SC)** later by the Supreme Court.

71. In the aforesaid judgment of **Shirish Agrawal (supra)**, the Full Bench has noted the position that there is an adjudication mechanism in Sections 47-A to 47-D of Excise Act, there is a power of revision to the Court of Sessions and if the Court of Sessions finds any illegality in the order of confiscating authority or the appellate authority, it may confirm, reverse or modify the said order. The Full Bench while upholding the constitutionality of Sections 47-A to 47-D has held as under:-

“Sections 47-A and 47-D have been held by both the learned Judges of the Division Bench to be intravires not offending any provision of the Constitution. In our view also these provisions do not suffer from the vice of unconstitutionality.”

72. Upon perusal of the said judgment we find that issue that lack of knowledge and connivance of owner of property being not made available to the owner of the property in confiscation proceedings before the Collector was not placed before the Full Bench and the argument was neither placed nor considered by the Full Bench. The Full Bench decided the issue as two judges of the Division Bench were unanimous as to the validity of Sections 47-A and 47-D of the Excise Act, but one of the judges held that the non-conferral of power of stay on Revisional Court to be arbitrary and unreasonable. The Full Bench in **Shrish Agrawal (supra)** concurred with the unanimous conclusion of the Division Bench as to validity of Sections 47-A and 47-D and thereafter, the Full Bench proceeded to examine constitutionality of Section 47-C in detail which relates to powers of revisional Court i.e. Sessions Court. The Full Bench did not strike down, but read-down Section 47-C relating to powers of the Revisional Court and held that the Revisional Court will have same powers to preserve the property in question which is under confiscation and pass orders of interim nature for

custody and disposal etc. as the Appellate authority will have under Section 47-B.

73. On the issue of constitutionality of Section 47-A, all that was considered and decided by the Full Bench was as under :-

"It is to be noticed that in the present case the collector has the discretion to order the confiscation or not. That is clear from the use of the word 'may' in sub-section (2) of Section 47-A . He has to record in writing the grounds for ordering the confiscation. He has also been empowered to pass an order of interim nature for the custody and disposal etc. of the confiscated intoxicant, articles and conveyance etc. "as may appear to him to be necessary in the circumstances of the case". Thus, in a suitable case the conveyance or other material can be placed on supratnama of any person till the disposal of confiscation proceedings. The collector has to give an opportunity of hearing to the affected person before passing any order on the question of confiscation. In this connection it would be useful to refer to the decision of the Supreme Court in State of M.P. v. Azad Bharat finance Company. In that case it was found that Section 11 (d) of the opium Act, 1878 as applicable to Madhya Bharat provided that "the property detailed hereinbelow shall be confiscated". Interpreting these words the Supreme Court held that the confiscation is "permissible and not obligatory". It was observed that the use of the word "shall" does not always mean that enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and the other circumstances. It has been held that Section 11 of the Madhya Bharat Act is not obligatory and it is for the Court to consider in each case where the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case. In Section 47-A of the Act, as already discussed the word "may" has been used instead of "shall". Therefore, the Collector also while considering the question of confiscation under Section 47-A(2) of the Act would keep in mind that the confiscation is not obligatory in all cases but the judicial discretion conferred on him is to be exercised keeping in view all the facts and circumstances of the case. This legal position is being made clear as the learned counsel for the petitioner expressed an apprehension that the collector may pass order of confiscation in all the cases brought to him under Section 47-A of the Act."

74. The Full Bench in **Shrish Agrawal (supra)** did not at all consider the position that the Collector, who is not a judicial authority, and who is not authorized to consider the defence of lack of knowledge and connivance of the owner, whether the said provision would be disproportionate, arbitrary and unconstitutional. The Full Bench in **Shrish**

Agrawal (supra) simply held that confiscation is not mandatory, and Section 47-A is only an enabling or permissive provision, and cannot be said to be a mandatory one. However, as already considered by us above, when the confiscating authority would be the Court trying the offence, then all the facts shall be before the Court at the time of confiscation and the Court can take an appropriate decision whether to pass order for confiscation or not. The same power is given in section 46 and 47 of the Excise Act to the trial Court trying the offence, and though defence of lack of knowledge and connivance is not given, but when the Court would have tried the offence, it would have all the facts before it, and can pass an appropriate order for confiscation or otherwise. That power would be proportionate and reasonable. However, in the present case, what is under challenge is, power given to Executive (and not to a judicial authority) to pass order for confiscation even during pendency of trial, and not opening the defence of lack of knowledge and connivance to the owner of the vehicle. The Constitutionality and proportionality of the provisions have to be seen from this angle that were neither argued, nor considered by the Full Bench in **Shrish Agrawal (supra)**. As already noted above, the only case where similar provision has been considered by the Supreme Court in the case of **Azad Bharat (supra)** was where confiscation power was given to Trial Court under Opium Act 1878.

75. We have to consider that to what extent we are bound by the decision in the case of **Shrish Agrawal (supra)**, being a Bench of co-equal strength and bound to observe and respect the earlier precedent on the well established principle of *stare decisis*, as it was contended before us that in case of disagreement, the matter needs to be referred to a even larger Bench and should be placed before a Bench of 5 judges.

76. In the case of *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602, a seven-judges Constitution Bench considered the principle of *per incuriam* as under in majority view :-

*47. In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16-2-1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper-book. He argued that since the transfers have been made under Section 407, the procedure would be that given in Section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of 5-4-1985 which was made in the presence of the appellant and his counsel as well as the counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. **It is a settled rule that if a decision has been given per incuriam the court can ignore it.** It is also true that the decision of this Court in the case of Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603, 623] was not regarding an order which had become conclusive inter partes. The court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

(Emphasis supplied)

Even the minority view recognized that when a statutory provision is ignored, the judgement will become per-incuriam, but it will continue to have binding effect on atleast that case between those parties, though may not have value as precedent for other cases. The minority view was as under :-

182. It is asserted that the impugned directions issued by the Five-Judge Bench was per incuriam as it ignored the statute and the earlier Chadha case [AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071] .

183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word ‘decision’ means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)

“Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.”

(Emphasis supplied)

77. In the case of **Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court**, (1990) 3 SCC 682, a 5-judges Constitutional bench held as under :-

44. An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes) [1972 AC 634 : (1971) 3 All ER 948] , Lord Simon concerned with the decisions in Griffiths v. J.P. Harrison (Watford) Ltd. [1963 AC 1 : (1962) 1 All ER 909] and Finsbury Securities Ltd. v. Inland Revenue Commissioner [(1966) 1 WLR 1402 : (1966) 3 All ER 105] with their interrelationship and with the question whether Lupton's case [1972 AC 634 : (1971) 3 All ER 948] fell with-in the precedent established by the one or the other case, said: (AC p. 658)

“...what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of

the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material.”

78. In Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC it was held as under :-

19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

(Emphasis supplied)

79. In National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, the Constitutional Bench considered and affirmed the judgement of **Sundeep Kumar Bafna (supra)**, and while recognizing that the general principle is to follow the ratio of co-equal bench, held as under :-

28. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was

delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. We have no hesitation that it is not a binding precedent on the co-equal Bench.

(Emphasis supplied)

80. In *Shah Faesal v. Union of India*, (2020) 4 SCC 1, another Constitution Bench held as under :-

29. In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)

“183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word “decision” means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)

‘Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.’”

31. Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)

“19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the

application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."

81. We have already noted above that while discarding the constitutionality of Section 47-A of the Excise Act, that the Full Bench in **Shrish Agrawal (supra)** did not advert to the position that no defence can be set up in the said provision in the matter of lack of knowledge or connivance of the owner of the vehicle, and that since the proceedings are before the Collector who is not seized of the trial of criminal case, therefore, the entire facts would not be before the Collector which would automatically come to notice of the Court of law during trial while trying the criminal offence. The material provision having escaped the kind consideration of the earlier Full Bench, we are of considered opinion, that the aforesaid judgement of the Full Bench in **Shrish Agrawal (supra)**, is *per incuriam*.

82. It is *per incuriam* for another reason, that the earlier judgement of the Full Bench in **Madhukar Rao (FB) (supra)** which was delivered on 28.10.1999, in which the similar issues were considered by the Full Bench, though in relation to another enactment i.e. Wildlife Protection Act 1972, but same and similar issue of competence of confiscation was considered, was not placed for consideration before the subsequent Full Bench in **Shrish Agrawal (supra)**, though decided much later i.e. on 10.3.2003. The reasoning made by the earlier Full Bench in **Madhukar Rao**, if it had been before the Full Bench in **Shrish Agrawal**, then the said Bench would have certainly adverted to the reasonings made therein and given its reasons to deviate from it by declaring it *per incuriam* or inapplicable for reasons deemed valid by the said Bench, or would have followed it. However, by not

considering the earlier judgement of co-equal bench, the subsequent Full Bench in **Shrish Agrawal (supra)** cannot be said to have set out a binding precedent in view of 5-judge Special Bench judgment of this Court in **Jabalpur Bus Operators Association Vs. State of Madhya Pradesh, reported in 2003 (1) 513**, and also in view of various judgements of the Hon'ble Supreme Court that we have considered above. In case of **Jabalpur Bus Operators Association (supra)**, the Special Bench of 5 Judges held as under :-

9. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved. Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Court should follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is binding because of the theory of binding precedent and Article 141 of the Constitution of India. There are also decisions which hold that Single Judge differing from another Single Judge decision should refer the case to Larger Bench, otherwise he is bound by it. Decisions which are rendered without considering the decisions expressing contrary view have no value as a precedent. But in our considered opinion, the position may be stated thus-

With regard to the High Court, a Single Bench is bound by the decision of another Single Bench. In case, he does not agree with the view of the other Single Bench, he should refer the matter to the Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of later Division Bench shall be binding. The decision of Larger Bench is binding on Smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a Larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate

Courts. Similarly, in presence of Division Bench decisions and Larger Bench decisions, the decisions of Larger Bench are binding on the High Courts and the Subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and Subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in Balbir Singh's case (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in the preceding paragraph of this judgment, does not lay down the correct law as to application of precedent and is, therefore, over-ruled on this point.

Therefore, the judgment in case of **Shrish Agrawal (supra)** is per incuriam for the aforesaid reason also. The matter of constitutionality of Section 47-A was required to be examined from the touchstone of non-availability of defence of lack of knowledge and connivance of the owner and he having taken precautions to avoid use of vehicle for carrying the contraband to examine whether non-grant of such defence makes the power of confiscation practically mandatory in nature, so as to distinguish it with earlier Full Bench in case of **Madhukar Rao (FB) (supra)**, that the later Full Bench did not do as the earlier Full Bench view was not placed for consideration before the later Full Bench. We have already considered the aforesaid issue in detail and have already reached to a conclusion as above that the provision of Section 47-A is liable to be interfered with on ground of

violating principle of proportionality, and violating Articles 300-A as well as 19(1)(g) of the Constitution, and have declared it *ultra-vires*.

83. Thought most of the issues have already been dealt with by us above, but some additional consideration is required to be made in relation to Cow Progeny Act, which has been separately referred to the Full Bench by a learned Single Judge of this Court.

84. In the Cow Progeny Act, the relevant provision for confiscation is Section 11(5), which declares that in case of violation of Sections 4, 5, 6, 6-A, 6-B, the police shall be empowered to seize the vehicle and the District Magistrate shall confiscate such vehicle. A provision of appeal and further revision to Court of Session is also provided under the said Act by virtue of Sections 11-A and 11-B thereof. The relevant provisions are as under:-

“4, Prohibition of slaughter of cow progeny.

No person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter of any cow progeny by any means.

5. Prohibition on possession and transport of beef.

No person shall have in his possession or shall transport beef of any cow progeny slaughtered in contravention of the provisions of this Act.]

6. Prohibition on transport of cow progeny for slaughter.

No person including transporter shall transport or offer for transport or cause to be transported any cow progeny himself or by his agent, servant or by any other person acting in his behalf within the State or outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be so slaughtered.

6A. Prohibition of export of cow progeny and grant of permit.

(1) No person including transporter shall export or cause to be exported any cow progeny himself or by his agent, servant or by any other person acting in his behalf from any place of the State to any place outside the State without permit as provided in subsection (2).

(2) The Competent Authority may grant a permit within seven days on presenting application in this behalf, in such manner as may be prescribed for export of cow progeny from Madhya Pradesh for

agricultural of dairy farming purposes or for participation in a cattle fair and like purposes except for the purpose of slaughter.

(3) Any person seeking permit under sub-section (2) aggrieved by an order of the Competent Authority may make an application within thirty days from the date of receipt of the order to the Divisional Commissioner, and the Divisional Commissioner may upon such application call for the examine the record of the case for the purpose of satisfying himself as to the correctness, legality or propriety of any order and may pass such order as it may deem just and proper and the order passed by the Divisional Commissioner shall be final and shall not be called in question in any civil court.

6B. Prohibition of transporting cow progeny via Madhya Pradesh and grant of transit permit.

No person including transporter shall transport cow progeny via Madhya Pradesh State and if any person including transporter wants to transport any cow progeny from one State to other via Madhya Pradesh State, then he shall take transit permit from Competent Authority in such manner as may be prescribed.]

11. Power of entry, inspection, search and seizure.

(1) For the purpose of enforcing the provisions of this Act, the Competent Authority of any person authorized by the Competent Authority in writing in this behalf shall have power to enter and inspect any premises within the local limits of his jurisdiction, where he has reason to believe that an offence under this Act has been, is being or is likely to be committed and shall take necessary action.

(2) Every person in occupation of any such premises as is specified in subsection (1) shall allow the Competent Authority or any person authorized by the Competent Authority in writing, such access to the premises as he may require for the aforesaid purpose, and shall answer any question put to him by the Competent Authority or the person authorized, as the case may be, to the best of his knowledge and belief.

(3) Any police officer not below the rank of Head constable or any person authorized in this behalf by Competent Authority may, with a view to securing compliance of the provisions of Sections 4, 5, 6A and 6B or for satisfying himself that the provisions of the said sections have been complied with.

(a), stop, enter and search any vehicle used or intended to be used for the export of cow progeny or beef;

(b) seize or authorize the seizure of cow progeny, in respect of which he suspects that any provision of Sections 4, 5, 6, 6A and 6B has been, is being or is about to be contravened, along with the vehicle in which such cow progeny or beef are found and thereafter take or authorize the taking of all measures necessary for securing the-production of the cow

progeny and vehicle so seized, in a court and for their safe custody pending the trial.

(4) The provision of Section 100 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this Section.

(5) In case of any violation of Sections 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef in such manner as may be prescribed.

11A. Appeal against order of confiscation.

(1) Any person aggrieved by an order of confiscation under sub-section (5) of Section 11 may, within thirty days of the order, or if fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing with certified copy of order of confiscation, accompanied by such fee and payable in such manner as may be prescribed, to the Divisional Commissioner (hereinafter referred to as the Appellate Authority).

Explanation. *The time requisite for obtaining certified copy or order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.*

(2) The Appellate Authority referred to in sub-section (1) shall, on presentation of memorandum of appeal, issue a notice for hearing of appeal to the officer effecting seizure and to any other person who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and call for the record of the case:

Provided that no formal notice of appeal need be issued to the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, who may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal to the District Collector.

(4) The Appellate Authority may pass such orders of "interim" nature for custody or disposal (if necessary) of the subject matter of confiscation as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.

(6) On the date fixed for hearing of the appeal or on such date to which the hearing may be adjourned, the Appellate Authority shall pursue the record and hear the parties to the appeal if present in person, or through any agent duly authorized in writing or through a legal

practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification of order of confiscation –

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal make further enquiry itself Or cause it to be made by the District Collector and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or of order of consequential nature shall be sent to District Collector for compliance or for passing any appropriate order in conformity with the order of Appellate Authority.

11B. Revision before Court of Sessions against order of Appellate Authority –

Any party to the appeal aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned submit an application for revision to the Court of Sessions within the Sessions division whereof the head quarters of the Appellate Authority are situate.

Explanation. *In computing the period of thirty days under this section, the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded,]*

85. By carrying out amendment to the said Act vide Notification dated 16.08.2024, proviso has been inserted in Section 11(5) and a new sub-section 11(6) has been inserted whereby the jurisdiction of the Court to make order about disposal or custody of the vehicles and Cow Progeny seized has been excluded once intimation about initiation of confiscation proceedings under Section 11(5) is received by the Magistrate.

86. From a bare perusal of language of Section 11 (5) of the Cow Progeny Act, it is seen that the provision therein is that the District Magistrate shall confiscate the seized vehicles etc. in such manner as may be prescribed. No particular procedure for confiscation proceedings has been laid down in Section 11, nor any specific provision for hearing any person including owner of vehicle has been laid down in the said provision.

87. Rules are framed by the State Government under the said Act, which are known as M.P. Govansh Vadh Pratishedh Rules, 2012. Rule 5 thereof relates to confiscation by the District Magistrate. The only provision as per Rule 5 is as under:-

“5. Confiscation by District Magistrate :-

In case of any violation of section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef as per the provisions of section 100 of Criminal Procedure Code, 1973 (No.2 of 1974) in following manner :-

(i) He shall take possession of the vehicle;

(ii) He shall intimate the Veterinary Department to take in custody of the cow-progeny and beef.

(iii) The beef of cow-progeny shall be disposed of by the department by such procedure as he deems fit.”

88. The aforesaid Rule 5 also does not relate to any particular procedure to be followed, any particular person to be noticed or a defence to be taken by a person in the confiscation proceedings. The rule only states that the District Magistrate shall confiscate vehicle etc. as per provisions of Section 100 of Criminal Procedure Code. The erstwhile Code of Criminal Procedure in Section 100 thereof related to search and seizure and not confiscation. It is really surprising that how the procedure of Section 100 Cr.P.C. can be borrowed for the purpose of confiscation of vehicles and articles, which is totally irrelevant for the said purpose. No doubt search and seizure can take place by following procedure under Section 100, but it is beyond comprehension of this Court that by following the provisions of Section 100 for search and seizure, confiscation can take place by the District Magistrate. Therefore, it is to be held that no procedure for confiscation has been laid down either in the Cow Progeny Act or in the Rules of 2012 framed under the said Act, though only enabling provision for confiscation is there. The burden of proof is on the owner in trial before Court, who may or may not be the owner of vehicle.

89. Further, as per the provisions of the Cow Progeny Act, confiscation can take place in case of violation of Section 4, which prohibits slaughter of Cow Progeny. Section 5 prohibits possession and transport of beef and Section 6 prohibits transport of Cow Progeny for slaughter. Section 6-A prohibits export of Cow Progeny and grant of permit. Section 6-B prohibits transport of Cow Progeny through the State of Madhya Pradesh and provides for grant of transit permit.

90. In the aforesaid six provisions for violation of which confiscation can take place, no defence is carved out in the confiscation proceedings that the vehicle was used without the knowledge or connivance of the owner of vehicle. The only whisper to be found is in Section 6, which relates to the person transporting cow progeny or causing it to be transported himself or by his agent servant etc. for the purpose of slaughter or with the knowledge and it will be or likely to be slaughter.

91. No defence seems to be carved out in all the aforesaid provisions of Sections 4, 5, 6, 6-A and 6-B that the owner of vehicle can raise a defence that the vehicle was used without his knowledge. In fact, Sections 4, 5, 6, 6-A and 6-B are the criminal provisions and they would not apply to owner of the vehicle, but would apply only where the owner is the transporter also. However, no further defence has been carved out in Section 11(5), which relates to confiscation of vehicle of the owner being able to raise a defence in confiscation proceedings that the vehicle was used for the offence under the act without his knowledge or connivance. Therefore, so far as the rights given to the owners of vehicles are concerned, it appears that the provisions are not different from the provisions of Excise Act discussed above. Only a whisper of knowledge is found in Section 6, which is very ambiguous. The relevant fact is use of the vehicle in a particular manner, and the knowledge of the transporter, without any reference to knowledge of the owner is irrelevant because confiscation hits the owner, and not the transporter nor the supplier.

92. Very importantly, no power is given to Trial Court under Cow Progeny Act to pass order for confiscation and the only power is given to District Magistrate/Collector. In this view of the matter, it would have been appropriate that a proper procedure for enquiry had been laid down before the District Magistrate/Collector, and the lack of knowledge and connivance of owner/his agent had been engrafted in the said Act or Rules, so that the law would have ensured that the owner stood a proper chance to plead, represent and defend his case. However, the question of constitutionality of provisions of Cow Progeny Act relating to confiscation is neither referred before us, nor prayed in the petition in which reference has been made.

93. The issue relating to Cow Progeny Act has been dealt with by the Hon'ble Supreme Court in the case of **Abdul Vahab (supra)** wherein the Supreme Court reversed the confiscation as the accused had been acquitted in criminal trial. It was held that the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the truck of appellant therein when he stood acquitted in the criminal prosecution, was held amounting to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300-A. It was held not only arbitrary but also inconsistent with the legal requirements. The Hon'ble Supreme Court has held that confiscation despite acquittal by criminal court cannot be allowed to stand. The fact of acquittal was held to be a relevant factor in the matter of confiscation of vehicle.

94. As already discussed above, no defence of lack of knowledge and connivance of the owner has been made available to the owner, nor has any procedure for confiscation been laid down. Therefore, it is held that though the proceedings for confiscation can be initiated and proceeded parallel to criminal trial, but no confiscation order can be passed before conclusion of criminal trial and the Collector/District Magistrate would be empowered to confiscate the vehicle only if conviction is recorded in criminal trial and involvement of vehicle and knowledge/connivance of the owner is proved in

the criminal trial. We are also fortified in our conclusion by a recent order of the Hon'ble Supreme Court in **SLP (Crl.) No. 1910-1911/2024 (Mohammad Vs. State of Rajasthan)** wherein the Supreme Court held that confiscation under Section 6-A of The Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration of Export) Act 1995 will not be given effect to during pendency of criminal trial.

95. So far as the question of maintainability of writ petition is concerned, the position is not at all in dispute in terms of the settled position of law by various judgments of the Supreme Court, some of those being in the case of **Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771** and **Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1**, that once the order is without jurisdiction, the High Court can interfere in the said order in exercise of writ jurisdiction even on availability of alternative remedy of appeal/revision and also that alternative remedy being only self imposed restriction and not absolute bar to exercise of writ jurisdiction, where the order is passed by an authority having no authority to pass the order, then the High Court can always entertain writ petition. Therefore, it is to be held that writ petition is maintainable once an order is passed by the Collector/District Magistrate confiscating the vehicles by exercising powers under the provisions of M.P. Excise Act, 1915 and before conclusion of trial under Cow Progeny Act.

96. Therefore, the questions referred to us in the matter of jurisdiction to pass confiscation order during pendency of criminal proceedings under M.P. Excise Act, 1915 and Cow Progeny Act are answered in the following manner :

A. Section 47-A of M.P. Excise Act conferring authority on the Collector to pass order for confiscation is declared ultra-vires being disproportionately violative of Articles 19(1)(g) and 300-A of the Constitution of India. Therefore, question of confiscation by the Collector during pendency of criminal

trial no longer survives in the matter, as order for confiscation can now be passed only by the Criminal Court trying the offence in terms of sections 46 and 47 thereof. As a necessary consequence thereto, Section 47-D would become inoperative in all cases where confiscation orders have not been passed as yet, having rendered superfluous.

B. For cases under Cow Progeny Act, the Collector/District Magistrate shall be competent to initiate proceedings for confiscation during pendency of criminal trial, but no confiscation order can be passed before conclusion of criminal trial and the Collector/District Magistrate would be empowered to confiscate the vehicle only if conviction is recorded in criminal trial and involvement of vehicle and knowledge/connivance of the owner is proved in the criminal trial.

C. Writ petition is maintainable once an order is passed by the Collector/District Magistrate confiscating the vehicles by exercising powers under the provisions of M.P. Excise Act, 1915 and in case of Cow Progeny Act, if it is passed before conclusion of trial, because it will be without jurisdiction.

97. As we have held Section 47-A of the M.P. Excise Act to be *ultra-vires* of Constitution of India, and a number of cases must have been decided by now since the provision has been in existence, therefore, to avoid any chaos and needless heavy burden on State machinery and exchequer, we direct that this order would be applicable only prospectively in the following manner :-

a. for those pending cases where confiscation order has not yet been passed by the Collector till date of this order, this order will be applicable,

b. for the concluded cases where confiscation order has already been passed prior to date of this order, this order would apply only if an appeal/revision/petition under Section 482 CrPC or U/s 528 BNSS/writ petition or challenge in any manner is pending against confiscation order as on date of this order.

c. where either (a) the confiscation order or (b) order in appeal has already been passed prior to date of this order, the benefit of this order will be applicable only if statutory limitation for challenging the same has not expired on date of this order and if (c) order in Revision has been passed less than three months prior to date of this order, then also, benefit of this order will apply while making challenge before the High Court in Writ petition/Section 482 CrPC or Sec. 528 BNSS.

d. where the confiscation order has already been passed and it has not been challenged, or if challenged, the challenge has failed and not pending as on today and in case of confiscation order or appellate order, limitation to challenge the same has expired, or in case of Revisional order, same has been passed more than three months prior to date of this order and not put to challenge till today, confiscations in those cases will stand closed and shall not be re-opened in any manner for any purpose whatsoever for taking benefit of this order.

98. We having given our conclusions, W.P. No.6542/2025 is disposed of, while the reamaining matters be placed before the appropriate Bench for adjudication of the case.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(VIVEK JAIN)
JUDGE