

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 111 of 2019

Sepco Electric Power Construction Corporation, Through Its Project Manager, Mr. Fu. Shenqing KMPCL-CG-3600 MW Power Project, Nariyara, Tahsil Akaltara, District Janjgir Champa, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through The Station House Officer, Excise Department Excise Circle Bilaspur West, District Bilaspur, Chhattisgarh.

---- Respondents

 For Petitioner : Mr. Vikram Sharma, Advocate
 For State/Respondent : Mr. R.K.Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14.03.2019

Heard

1. The present petition is for custody of the vehicle Mahindra Scorpio bearing Registration No.CG-11-C-6666, which is said to be involved in the offence under the Excise Act carrying 24.05 bulk liters foreign liquor on 04.10.2018. The present petition is by the company which is registered owner of the vehicle.

2. Learned counsel for the petitioner would submit that both the Courts below fell into error by misinterpreting Section 47-A sub section 3 and rejected the custody of the vehicle only on the ground that the confiscation proceeding has already been started. It is stated that in order to invoke the bar of the criminal Court to give the custody of the vehicle, mandatory compliance of sub-section 3 of section 47-A is required. If such compliance is not made then inference of pending confiscation proceeding cannot be drawn.

3. State counsel opposes the argument and submits that the document Annexure R-1 & R-2 filed with the reply would show that the confiscation proceeding has already been commenced, therefore, it will create a bar to handover the custody of the vehicle by the criminal Court and accordingly the orders are well merited.
4. Perused the orders of both the Courts below. As per the prosecution, the vehicle bearing Registration No.CG-11-C-6666 belong to the company was intercepted on 04.10.2018 and was taken into custody, which was driven by one Shivram Krishna Mohanto who was employee of the petitioner company. On search being made, 24.05 bulk liters of foreign liquor was found; thereby the offence under Section 34(1)(a), 34(2), 59(A) of the Chhattisgarh Excise Act, 1915 was registered under Crime No.77/18. Subsequent to such seizure of the vehicle, an interim application was filed by the Company before the Court below of Judicial Magistrate for custody of vehicle. The Judicial Magistrate by an order dated 19.12.2018 dismissed the application for interim custody of the vehicle on the ground that the Department of Excise through its Sub-Inspector has filed a memo before the Court that confiscation proceedings are pending before the Collector, Bilaspur. The Judicial Magistrate on that account since the proceeding for confiscation is pending has dismissed the application for supurdnama, when it was further challenged before Revisional Court, it was affirmed in the revision.
5. In order to start the confiscation proceeding statutory compliance under the Act would be required. The Chhattisgarh Excise Act, 1915 lays down the procedure. Section 47-A of the entire Act

would be relevant which governs the obligation of Authorities,
which is reproduced herein below :

Section 47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc.

- (1) Whenever any offence covered by clause (a) or (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 [Substituted by C.G. Act No. 8 of 2011, w.e.f. 30-4-2011.] [five bulk litre], every office, 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 [Substituted by C.G. Act No. 8 of 2011, w.e.f. 30-4-2011.] [five bulk litre] 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 or interim nature for the custody, disposal etc. 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 it 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.

6. Reading of the aforesaid section, it shows that sub-section 2 of Section 47-A purports that the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about seizure, if it 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 was more than 5 bulk liter, he may order for confiscation of such goods, articles and conveyance etc. The power under sub-section (2) is further controlled by sub-section (3). It purports that no order for confiscation shall be made unless the Collector has sent an intimation in a form prescribed by the Excise Commissioner for confiscation of the goods, articles etc. to the Court having jurisdiction to try the offence on account of which the seizure has been made. Further the sub-section (b) of sub-section (3) mandate that the Collector shall further be required to send a notice in writing to the person from whom it was seized and to any person staking claim to it. Then the opportunity of hearing be given.
7. Sub section (2) of Section 47-A & 47-D therefore necessarily will take away power of the criminal Court to grant custody when the necessary compliance of pendency of the confiscation proceeding is established before the Court by compliance of sub-section (3) of Section 47. Section 47-D creates a bar of the jurisdiction of the Court when the compliance of sub-section (3) of Section 47-A is made. Alongwith the reply, the document Annexure R-1 & R-2 has

been placed which on bare perusal would show that Annexure R-1 was issued on 21.02.2019 by the Additional Commissioner Excise to the Collector proposing the confiscation. Therefore, at first instance it shows that was a compliance of sub-section (2) of Section 47-A, which purports the Collector has received the information about the commission of an offence. Nothing on record to show that the Collector after receipt of such information proceeded to confiscation which is required to be established by necessary compliance of sub-section (3) of Section 47-A. The section requires that the intimation has to be sent to the Court having jurisdiction to try the offence i.e. Magistrate so as to set into motion the bar of Section 47-D of the Excise Act.

8. In the facts of this case, the finding of both the Courts below that the intimation has been sent by the Excise Officer to the Collector for confiscation will take away the jurisdiction of the criminal Court under Section 47-D cannot be appreciated. If the statute is penal in nature, strict compliance of it has to be adhered to. If not established by facts & admissible document then adverse inference can be drawn. In the result, the finding of both the Courts below dated 19.12.2018 & 01.01.2019 cannot be sustained.
9. The facts would show that the seizure of the vehicle was made on 04.10.2018. The petitioner is a company and it is alleged that the said vehicle was used by one of the employee of the company, which was seized. So for all practical purpose vehicle is lying at the disposal of authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road worthiness when kept

in stationery position. In facts of the case following the law laid down in case of ***General Insurance Council and others Vs. State of Andhra Pradesh and others*** reported in **(2010) 6 SCC 768** wherein the earlier principles laid down in case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in **(2002) 10 SCC 283** was reiterated, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the said principles, it is directed that the vehicle be released in favour of petitioner by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.

10. In view of the above, the petition is allowed. The vehicle is directed to be released to the petitioner on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.
2. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.
3. Proper security i.e. personal bond of Rs. 10 Lakhs and like sum of surety be obtained before release of vehicle.

Sd/-
(Goutam Bhaduri)
Judge