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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on:14/07/2020

Order delivered on:05/08/2020

Cr.M.P.No.534 of 2020

Vinod Kumar Sahu, S/o Shnri Vedram Sahu, Aged About 35 years, R/o-Sindhi Colony, Janjgir, District Janjgir-Champa (CG)

---- Petitioner

Versus

1. Commissioner Excise, Raipur, District – Raipur (CG)
2. The Collector, Mungeli, District – Mungeli (CG)
3. District Excise Officer, Mungeli, District – Mungeli (CG)
4. Station In Charge, Lormi, District – Mungeli (CG)

---- Respondents

For Petitioner : Mr.Harshwardhan Parghaniya, Advocate
For Respondents: Dr.Veena Nair, Dy.Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. This CrMP has been taken-up for final hearing through video conferencing.
2. The petitioner herein calls in question the order dated 21.10.2019 (Annexure P-1) passed by the Sessions Judge, Mungeli, in Criminal Revision No.46/2018, whereby learned Sessions Judge affirmed the order dated 27.4.2017 (Annexure P-2) passed by the Excise Commissioner, Chhattisgarh, Raipur in Appeal Case No.R.E.C.-44/2016-17 and order dated 12.9.2016 (Annexure P-3) passed by the Collector, Mungeli by

which the Collector has confiscated four wheeler Mahindra Bolero owned by the petitioner in exercise of power conferred under Section 47-A of the Chhattisgarh Excise Act, 1915 (hereinafter called as 'the Act of 1915').

3. The petitioner is owner of Mahindra Bolero bearing registration No.CG-11 E-1768, which is said to have been seized from possession of Rajesh Singh on 28.5.2016 and found involved in commission of offence under Sections 34(1), 34(2) and 59(A) of the Act of 1915 in Crime No.216/2016. Mr.Rajesh Singh was charge-sheeted before jurisdictional criminal Court and ultimately, by order dated 28.7.2016 he was acquitted and thereafter the petitioner moved an application for interim custody of the said vehicle before the Collector, Mungeli on 1.5.2016. In the meanwhile, on 22.8.2016 on the basis of report of the Superintendent of Police, Mungeli, a revenue case for confiscation of the said vehicle was initiated by the Collector, Mungeli and ultimately by order dated 12.9.2016 the vehicle was directed to be confiscated, against which, the petitioner preferred appeal under Section 47-B of the Act of 1915 before the Excise Commissioner, but that has also been dismissed by order dated 27.4.2017, against which, the petitioner preferred revision, revision was dismissed by the Sessions Judge, Mungeli, against which, this petition under Section 482 of the CrPC has been preferred by the petitioner stating inter-alia that order of confiscation as passed by the Collector and affirmed by the Excise Commissioner and revisional Court run contrary to the provisions contained in Section 47-A(3)(a) to (d) of the Act of 1915, therefore, it is liable to be set aside.

4. The State has filed return stating inter-alia that order passed by the Collector confiscating the petitioner's vehicle as affirmed by the Excise Commissioner and further affirmed by the revisional Court is in accordance with law and the petition under Section 482 of the CrPC deserves to be dismissed.

5. Mr.Harshwardhan Parghaniya, learned counsel for the petitioner, would submit that there is complete non-compliance of the provisions contained in Section 47-A (3) of the Act of 1915, neither notice was issued to the petitioner nor it was issued to the person from whom the vehicle was seized. The petitioner was not afforded an opportunity of making a representation against proposed confiscation and no opportunity of hearing was given to him as contemplated under Section 47-A(3) (d) of the Act of 1915, therefore, the impugned order passed by the Collector duly affirmed by the Commissioner and the revisional Court deserves to be set aside.

6. Dr.Veena Nair, learned Deputy Advocate General for the respondents/State in her oral as well as written submission would submit that huge quantity of liquor i.e. 180 bulk liters of liquor has been seized from the vehicle owned by the petitioner, therefore, it has rightly been confiscated and as such, no interference is called for in the order of confiscation as well as in the appellate and revisional orders.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Section 47-A of the Act of 1915 was inserted in the Act of 1915 by M.P.Act No.22 of 2000 w.e.f. 4.8.2000. Sub-section (2) of Section 47-A of Act of 1915 provides for confiscation. It can be exercised if Collector 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 liters he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc. so seized.

9. Sub-section (3) of Section 47-A of the Act of 1915 provides as under:-

> "(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;
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> (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;
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> (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."

10. A careful perusal of the aforesaid provisions would show that as per clause (a) of sub-section (3) of Section 47-A of the Act of 1915, the Collector has to send an intimation in the form prescribed by the Excise Commissioner about the 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. The Collector is further obliged to issue 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.

11. The Madhya Pradesh High Court in the matter of **Rajendra Kumar Gupta v. State of M.P. and another**[1] has held that issuance of notice to the driver or the person from whom vehicle was seized is mandatory and order of confiscation passed without hearing the person from whose possession the illicit liquor or contraband is seized is illegal.

12. Clause (c) of sub-section (3) of Section 47-A of the Act of 1915 provides an opportunity to the persons referred to in clause (b) above of making a representation against proposed confiscation.

13. In the matter of **Khem Chand v. Union of India and others**[2], Their Lordships of the Supreme Court have considered Article 311(2) of the Constitution of India which provides that no person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against

1 2002(4) M.P.L.J. 149
2 AIR 1958 SC 300

action proposed to be taken in regard to him. It has been held that an opportunity to make a representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and observed as under:-

> "19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes:
> (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
> (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally
> (c) an opportunity to make his representation as to why the proposed punishment should not be inflected on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.
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> In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in S. 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art.311(2) so as to convert the protection into a constitutional

safeguard."

14. Similarly, an opportunity to the person referred in clause (c) of making a representation against proposed confiscation though it is not specifically mentioned in clause (c) of sub-section (3) of Section 47-A of the Act of 1915, that the material collected in support of confiscation should also be supplied. In the considered opinion of this Court, the supply of the material on the basis of which opinion has been formed for confiscation of vehicle in question is included in the opportunity as contemplated under Section 47-A(3)(c) of the Act of 1915. To enable the person to defend himself properly, it is necessary that the material on the basis of which opinion has been formed would also be supplied.

15. Likewise, the Collector while confiscating the seized intoxicants, articles, implements, utensils, materials, conveyance is also obliged to give a hearing to the person mentioned in clause (b) of sub-section (3) of Section 47-A of the Act of 1915.

16. The word 'hearing' has been defined in Black's Law Dictionary, 6th Edition, page 721 as under:-

> The introduction and admissibility of evidence is usually mere lax in a hearing than in a civil or criminal trial (see e.g. 42 U.S.C.A. $ 405(b) which provides for admissibility of evidence at social security hearings that would otherwise be inadmissible

at regular trial).

Hearings are extensively employed by both legislative and administrative agencies and can be adjudicative or merely investigatory. Adjudicative hearings can be appealed in a court of law. Congressional committees often hold hearings prior to enactment of legislation; these hearings are then important sources of legislative history."

17. The Advanced Law Lexicon-2005th edition defines "hearing" as the trial of a suit is called a "hearing" and technically considered, this includes not only introduction of the evidence and arguments of the counsels, but the pronouncing of the decree by the presiding officer.

18. The Patna High Court in the matter of **Sheikh Abdul Rahman v. Shiblal Sahu and others**[3] defined the "hearing" as a judicial session held for the purpose of deciding issues of fact or that of law; in administrative law, presentment of argument by the affected individual to the decision making authority.

19. In the matter of **Kanaran Nambiar v. Ramunni Nambiar**[4] the Kerala High Court has held that "hearing" as used in the Code of Civil Procedure does not mean the 'hearing of arguments' only. It refers to all the stages of the trial of a suit namely, the settling of issues, taking of evidence and hearing of arguments or 'other proceedings tendency to a final adjudication of

3 AIR 1922 Patna 252
4 AIR 1961 Kerala 290

the suit.

20. Thus, in the light of legal provisions noticed hereinabove and conditions precedent for passing the order of confiscation and principles of law noticed, it is quite vivid that before confiscating the seized intoxicants, articles, implements, utensils, materials, conveyance etc. as mentioned in Section 47-A (3) (a) of the Act of 1915, the Collector is obliged to send an intimation in the prescribed form about the initiation of proceedings for confiscation of seized articles to the court having jurisdiction to try the offence on account of which the seizure has been made. The Collector is further obliged to issue 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 and thereafter he has to afford an opportunity to the persons referred to in clause (b) of making a representation against proposed confiscation and lastly, he is obliged to give a hearing 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.

21. The aforesaid conditions precedent are *sine-qua-*

non for passing a valid order of confiscation of the vehicle seized in excise offence. If one of the conditions precedent is missing while passing the order of confiscation, the said order would be vulnerable and liable to be set aside as order of confiscation involves a drastic action against owner of the property by which he (owner) is completely deprived of owning the property having civil consequences. Therefore, the provisions relating to effecting confiscation has to be construed strictly being penal provision.

22. Reverting to the facts of the case in the light of the aforesaid principle of law noticed hereinabove, it is quite vivid that in the instant case, the Collector did not issue any notice to the petitioner along with the materials in support of proposed confiscation proceedings at any point of time. It appears from the records that since the petitioner has already appeared before the Collector by filing an application seeking interim custody of the subject vehicle, the learned Collector held that since he is already appearing, therefore, the provisions as contained in clause (b) of sub-section (3) of Section 47-A of the Act of 1915 stood complied with, whereas it is not so. The Collector did not issue any notice of confiscation proceeding to Mr.Rajesh Singh from whom the vehicle was seized on 28.5.2016, nor issued notice to the petitioner along with material brought on record for confiscation who is admittedly owner of the vehicle. Incidentally, the petitioner had filed an application for interim custody of the vehicle, the Collector held that sufficient compliance of Section 47-A(3)(b) of the Act of 1915 has been done, which is absolutely illegal finding. He ought to have issued the notice to both the persons and could have supplied the materials in support of notice said to be issued for confiscation enabling them to defend properly the confiscation proceedings.

23. On 22.7.2016, the Collector directed that report be called from the District Excise Officer and the Station House Officer, Lormi and thereafter on 1.8.2016 memo was sent by the Collector to the District Excise Officer and the Station House Officer seeking their report and on 12.9.2016 order was passed confiscating the subject vehicle in favour of the State. Neither the petitioner was given documents in support of seized articles by seizing authority nor he was given any material relied upon by the State. No hearing took place as the petitioner was not given an opportunity either to make a representation or to adduce any evidence in support of his case. No evidence was even led by the officer seizing the said vehicle and even after alleged conclusion of the enquiry, the petitioner was not asked to make a representation against proposed confiscation, as such, order of confiscation is clearly in teeth of the provisions contained in Section 47-A (3) (a) to (d) of the Act of 1915. Neither he was afforded an opportunity to make a representation by the Collector against proposed confiscation and even no opportunity of leading evidence was afforded to the petitioner for proving his case and thus, it is the case of no evidence adduced either by the Excise Department or by the petitioner and order of confiscation has been passed and duly approved by the appellate and the revisional authorities.

24. As such, clauses (b), (c) and (d) of sub-section (3) of Section 47-A of the Act of 1915 have been followed by the Collector in its breach, which is apparent and evident from perusal of the confiscation proceedings.

25. Consequently, it is held that order of confiscation passed by the Collector as affirmed by the Excise Commissioner and further affirmed by the revisional Court is clearly in teeth of the provisions contained in Section 47-A(3) (a) to (d) of the Act of 1915 and as such, it is liable to be set aside and is hereby set aside. The petitioner's vehicle be released forthwith.

26. The CrMP is allowed to the extent sketched hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-