

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.82 of 2021

- Amit Jain S/o Padam Jain, Aged About 38 Years R/o Shiv Para, Near Sharda Milk Dairy Durg, Tahsil And District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Collector, Durg, District Durg Chhattisgarh
2. Assistant Commissioner (Excise) Durg, District Durg Chhattisgarh

---- Respondents

For Petitioner	– Mr. Tarendra Kumar Jha, Advocate.
For State/respondents	– Mr. Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-07-2021

1. This petition under Article 227 of Constitution of India has been brought seeking indulgence of this Court for granting relief to the petitioner by way of interim custody of the vehicle seized in connection with the offence committed under C.G. Excise Act 2015.
2. It is submitted that the petitioner is the registered owner of the Activa Scooter No.CG-04-KS-4031. This applicant is not an accused in the offence registered under C.G. Excise Act, 2015 against other co-accused persons. Although, the Collector, Durg has initiated the confiscation proceeding with respect to this seized article but the petitioner has entitlement for interim custody until the final order is not

passed in the confiscation proceeding. The application filed for interim custody before Collector Durg has been dismissed vide order dated 10.09.2020 without mentioning any reason and this order is a non-speaking order, therefore, it is submitted that on the basis of the prima-facie entitlement of the petitioners for interim custody of the vehicle, this petition may be allowed and interim custody of the vehicle may be granted to the petitioner.

3. Reliance has been placed on the judgment of this Court in W.P.(Cr.) No.121 of 2016 between Ranjeet Kumar Gupta Vs. State of Chhattisgarh & Anr. decided on 17.04.2017 and in the order of this Court in W.P.(Cr.) No.365 of 2021 between parties Rajesh Patel Vs. State of Chhattisgarh and Anr decided on 24.06.2021.
4. Learned State counsel opposes the petition and the submissions of the learned counsel for the petitioner and submits that although the order passed by the Collector is not appealable, even then, the petition under Article 227 of Constitution of India is not maintainable, therefore, the application under Section 482 of Cr.P.C. is the only remedy available. Hence, the petition may be dismissed.
5. Heard learned counsel for the petitioner and perused the documents present on record.
6. The provision under Section 47 A (2) of the Act, 1915 is as follows:-

“47-A (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

five bulk liters he may, on the ground to be recorded in writing, order the confiscation of the intoxicant, 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 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."

7. The Collector while taking up the confiscation proceeding has discretion with him to pass order of interim nature for custody of any seized Article, which may appear to him to be necessary in the circumstances of the case. As the order of rejection of application of interim custody is not appealable under Section 47-B of 1915, therefore, it can be challenged in either manner under Article 226 or 227 of Constitution of India. The petitioner has chosen to file this petition under Article 227 Constitution of India. As it appears that the Collector while exercising the powers under Section 47-A Acts as a quasi judicial authority. As he has power to issue notices to the persons from whom, the article has been seized or to any other person, who is staking claim on the property seized, for the purpose of giving them hearing before passing of the order of confiscation and the Collector has to afford an opportunity to such persons for making their representation against the proposed confiscation. Therefore, the Collector exercising such power is a quasi judicial body and the orders passed are subject to supervision of this Court, hence, the objections raised by the respondent's side made hereinabove are not sustainable. I am of this view that the Collector Durg had the power to exercise discretion for granting interim custody of the seized vehicle during the pendency of confiscation. The petitioner is

the person who has staked his claim over the seized vehicle, hence, for the reason that the Collector Durg has failed to exercise such discretion, which is wanted in such cases, this petition is allowed and disposed off at the motion stage. The impugned order dated 10.09.2020 is set aside. The Collector Durg is directed to release the vehicle under seizure in the offence mentioned hereinabove on appropriate terms, on interim custody until the completion of the confiscation proceeding. This interim custody shall remain effective until the final orders are passed by the Collector Durg in the confiscation proceeding.

8. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika