

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.2739 of 2019**

Manharan Satnami S/o Jahaji Satnami, aged about 36 years,
R/o C/0-Kedarnath Yadav Near Minimata Chowk Pulgaon,
District – Durg (CG), Permanent Address – Village
Bhinbhauri, Post – Silhati, Police Station – S. Lohara,
District – Kabirdham (CG)

----- **Petitioner**

Versus

State of Chhattisgarh, through District Magistrate,
Kabirdham, District – Kabirdham (CG)

----- **Respondent**

For Petitioner : Mr.Dharmesh Shrivastava, Advocate
For Respondent : Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/02/2021

1. This petition under Section 482 of the CrPC is directed against the order dated 11.11.2019 (Annexure P-1) passed by the Additional Sessions Judge, Kabirdham, in Criminal Revision No.21/2019, affirming the order of the Excise Commissioner in Appeal by which the Excise Commissioner has affirmed the order of learned Collector/District Magistrate confiscating the petitioner's vehicle found involved in excise offence in exercise of power conferred under Section 47-A of the Chhattisgarh Excise Act, 1915 (hereinafter called as 'the Act of 1915').
2. Mr.Dharmesh Shrivastava, learned counsel for the petitioner, would submit that the Collector/District

Magistrate while confiscating the offending vehicle did not follow the mandatory provisions contained in Section 47-A(3) of the Act of 1915, particularly Section 47-A(3)(c) which renders the entire confiscation illegal and bad in law as the petitioner was neither afforded an opportunity of material collected in support of proposed confiscation and even he was not given an opportunity of making a representation against proposed confiscation and thereby suffered serious prejudice and therefore, the impugned order passed by the Collector as affirmed by the Excise Commissioner and the Additional Sessions Judge deserves to be set-aside.

3. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate for the respondent/State, would support the impugned order and submit that order of confiscation has rightly been passed by the learned Collector, which has been affirmed by the appellate and revisional authorities is in accordance with law and as such, the petition deserves to be dismissed.

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

5. 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.

6. 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;

(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."

7. 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.

8. 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.

9. Clause (c) of sub-section (3) of Section 47-A of the

¹ 2002(4) M.P.L.J. 149

Act of 1915 provides an opportunity to the persons referred to in clause (b) above of making a representation against proposed confiscation.

10. In the matter of **Khem Chand v. Union of India and others²**, 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 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 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 communicates the same to the government servant.

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."

11. 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 should also be supplied.

12. 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.

13. 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."

14. 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.

15. The Patna High Court in the matter of Sheikh Abdul Rahman v. Shiblal Sahu and others³ defined the "hearing" as a judicial session held for the purpose

3 AIR 1922 Patna 252

of deciding issues of fact or that of law; in administrative law, presentment of argument by the affected individual to the decision making authority.

16. In the matter of Kanaran Nambiar v. Ramunni Nambiar⁴ 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 the suit.

17. 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,

4 AIR 1961 Kerala 290

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.

18. 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 have to be construed strictly being penal provision.

19. Reverting to the facts of the case in the light of the aforesaid principle of law noticed hereinabove, it is not in dispute that the petitioner's vehicle was

found involved in commission of offence and his vehicle has been confiscated by learned Collector and order of confiscation has been affirmed by the revisional and appellate authorities.

20. The only submission made is that the provisions contained in Section 47-A(3) (a) to (c) of the Act of 1915 have not been complied with, therefore, the order of confiscation is bad in law.

21. Original record has been requisitioned by this Court. A careful perusal of the record would show that so far as compliance of the provisions contained in Section 47-A(3) (a) of the Act of 1915 is concerned, intimation has been sent about the initiation of confiscation proceeding by learned Collector to the Judicial Magistrate having jurisdiction to try the offence under Section 34(2) of the Act of 1915 on 9.5.2017. Similarly, the Collector has issued show-cause notice to the petitioner for compliance of the provisions contained in Section 47-A(3)(b) of the Act of 1915 as the vehicle has been seized from possession of the petitioner on 9.5.2017 and as such, the provisions contained in Section 47-A(3)(a) and (b) have been complied with.

22. Now the question is whether the provisions contained in Section 47-A(3)(c) and (d) of the Act of

1915 have been complied with or not as it is the case of the petitioner that neither he has been given material collected in support of proposed confiscation nor he has been given an opportunity of making a representation against proposed confiscation.

23. A careful perusal of the record would show that after the reply is filed and evidence of the prosecution is recorded, the Collector straightway after hearing the parties passed an order of confiscation, as such, neither material collected for confiscating the vehicle was supplied to the petitioner nor he was given an opportunity of making a representation against proposed confiscation, as such, there is total non-compliance of the provisions contained in Section 47-A(3)(c) of the Act of 1915. Since the vehicle has been seized from possession of the petitioner, he was required to be supplied the material collected and was required to be given an opportunity of making a representation against proposed confiscation as the order of confiscation involves drastic civil consequences.

24. In that view of the matter, the learned Collector as well as the appellate and the revisional authorities has committed illegality in passing the order of confiscation without complying with mandatory

provisions contained in Section 47-A(3)(c) and (d) of the Act of 1915 and consequently, the order of confiscation passed by the Collector as affirmed by the Excise Commissioner and the Additional Sessions Judge are hereby set aside. The petitioner's vehicle be released forthwith.

25. The petition under Section 482 of the CrPC is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-