

## Kishore Sinha Vs State of Chhattisgarh and Another

**Court:** Chhattisgarh High Court

**Date of Decision:** Sept. 21, 2010

**Acts Referred:** Constitution of India, 1950 " Article 226, 227

**Citation:** (2011) 1 MPHT 9

**Hon'ble Judges:** Satish K. Agnihotri, J

**Bench:** Division Bench

**Advocate:** Rajesh Singh, for the Appellant; Shashank Thakur, Panel Lawyer for the State, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Satish K. Agnihotri, J.

By this petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the legality and

validity of the order dated 24-12-2001 (Annexure P-3) passed by the Collector, Raipur, in Revenue Case No. 20/B/121 year 2001-2002 (State

of Chhattisgarh Vs. Shri Kishore). Learned Counsel appearing for the petitioner submits that on 8-5-2001, the vehicle bearing Registration No.

M.P.-23/T-1123 (for short "the offending vehicle") owned by the petitioner was alleged to have been carrying 24 boxes of foreign liquor valued at

Rs. 24,000/-. The offending vehicle as well as the foreign liquor were seized and Crime No. 212/2001 was registered against the petitioner-owner

of the offending vehicle. At the time of the incident, the offending vehicle was driven by one Om Prakash.

2. According to the learned Counsel appearing for the petitioner, vide notification dated 2-2-2001 published in the Government Gazette, the

Authorized Officer has been notified to be Assistant Commissioner (Excise) and all the District Excise Officers with their respective jurisdiction. In

the present case, the same has not been done whereas the seized offending vehicle was produced before the Collector, Raipur, which is contrary

to the notification issued by the Government and the provisions of Section 47-A of the Chhattisgarh Excise Act, 1915 (for short "the Act, 1915").

Thereafter, as an interim measure, the offending vehicle was handed over to the petitioner on Supurdnama, as is evident from Annexure P-2.

However, while passing the final order dated 24-12-2001 (Annexure P-3) the offending vehicle was confiscated and the interim order was

cancelled in an illegal and arbitrary manner and against the provisions of law. Thus, this petition.

3. On the other hand, learned Counsel appearing for the State, submits that as per the provisions of Section 47-A of the Act, 1915 the Collector

initiated the proceeding, intimation with regard to initiation of confiscation proceeding was sent to the Chief Judicial Magistrate, Raipur and the

show-cause notice was also issued to the petitioner. After following the due process of law and after affording full opportunity of hearing, the final

confiscation order was passed by the Collector in accordance with law, thus, interference of this Court, may not be necessary. Learned Counsel

further submits that Section 47 of the Act, 1915 provides that the Investigating Officer will submit the report to the Officer not below the rank of

District Excise Officer. Thus, the Investigating Officer rightly submitted its report before the Collector. Thus, the petition may be dismissed.

4. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

5. Section 47-A of the Act, 1915, as prevalent provides for seizure of intoxicants, articles, implements, utensils, materials, conveyance etc., as

empowered u/s 52 (1) of the Act, 1915.

6. Section 52(1) of the Act, 1915 provides that any Excise Officer, or any Police Officer not below such rank as the State Government may, by

notification prescribed shall seize and detain any intoxicants or other article which he has reason to believe to be liable to confiscation under this

Act.

7. Sections 47-A and 52 (1) of the Act, 1915 reads as under:--

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

fifty bulk litres, every officer, empowered u/s 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 Collector of the District, 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 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.

52. Power to arrest without warrant to seize article liable to confiscation and to make searches.-- (1) Any Excise Officer, or any Police Officer not

below such rank as the State Government may, by notification, prescribe, or single officer or class of officers of the Revenue Department duly

empowered in this behalf by notification of the State Government subject to such restrictions as the State Government may prescribe, and any

other person duly empowered by notification of the State Government in this behalf,--

(a) may arrest without warrant any person found committing an offence punishable u/s 23-A, 34, 35, 36, 36-A, 36-B, 36-C, 37, 38-A, 40 or 49-

A; and

(b) shall seize and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under this Act or any other law

for the time being in force relating to exercise revenue; and

(c) may detain and search any person upon whom, and any vessel, craft, vehicle, animal, package, receptacle, or covering in or upon which he

may have reasonable cause to suspect any such article to be.

8. Sub-section (3) of Section 47-A of the Act, 1915 provides for an intimation to the Court having jurisdiction to try the offence on account of

which the seizure has been made.

9. In the case on hand, the seizure was done by the Superintendent of Police of the District, which was produced without undue delay before the

Collector of the District. The Collector after complying with the provisions of sub-section (3) of Section 47-A of the Act, 1915 passed the order,

which is under challenge in this petition.

10. Learned Counsel appearing for the petitioner submits that Assistant Commissioner (Excise) and all the District Excise Officers only are notified

to be Authorized Officers u/s 52 of the Act, 1915. On the other hand, it was submitted by the State that the Superintendent of Police is also a

Notified Officer under the provision of sub-section (1) of Section 52 of the Act, 1915.

11. The notification has been issued (Annexure R-5), whereby the Police Officer not below the rank of Sub Inspector have been authorized under

the provisions of Sections 39-A, 52, 54, 55 (1) and 59 of the Act, 1915. Thus, the contention of the petitioner that the Superintendent of Police

was not an Authorized Officer is without any basis and contrary to facts.

12. The offending vehicle and the liquor were seized from the possession of the petitioner on 8-5-2001, the same were produced before the

Collector on 10-5-2001 (Annexure R-1). The Collector intimated about the seizure of the offending vehicle and liquor to the Chief Judicial

Magistrate. Raipur on 18-5-2001 (Annexure R-2) and a show-cause notice was issued to the petitioner on 18-5-2001 (Annexure R-3).

13. Thus, it cannot be held that the Superintendent of Police of the District may not be a Notified Officer under the provisions of Section 52 (1).

Thereafter, the statutory procedure requires the seized articles were produced before the Collector without undue delay and the Collector has

passed the order after affording opportunity of hearing to the petitioner and after intimating the Magistrate, a Competent Officer to try the case.

14. Looking from all angles and also jurisdiction of this Court, under Article 227 of the Constitution of India, this Court is of the view that there is

no procedural irregularity or perversity in the impugned order warranting interference.

15. It is well-nigh established that the High Court in exercise of its extra-ordinary jurisdiction under Article 226 and supervisory jurisdiction under

Article 227 of the Constitution of India, should refrain itself from interfering with the order passed by the Courts below, except in such cases where

perversity, illegality, irregularity or jurisdictional error is writ large on the face of the record, which are not available in the present case. In the

result, the writ petition is fails and is hereby dismissed. No order as to costs.