

Page No.# 1/4 vs Shyam Sundar Paul on 13 December, 2022

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Bench: Manish Choudhury

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GAHC010250942022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Pet./1255/2022

THE STATE OF ASSAM AND ANR
REP. BY COMMISSIONER AND SECRETARY, GOVT.OF ASSAM, HOME AND
POLITICAL DEPARTMENT, DISPUR, GUWAHATI-6.

2: INVESTIGATING OFFICER NAMELY SI MADAN CHANDRA KALITA
S/O LATE G. KALITA
R/O GRPS GUWAHATI
PERMANENT RESIDENT OF NAMPANI GAON
NAGAON
ASSA

VERSUS

SHYAM SUNDAR PAUL
S/O AMULYA RATAN PAUL,
VILL- EAST KANISHALI,
DIST. KARIMGANJ, ASSAM

Advocate for the Petitioner : MR. R R KAUSHIK

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 13.12.2022 Heard Mr. M. Phukan, learned Public Prosecutor for the petitioners.

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2. The instant criminal petition under Section 482 r/w Section 401, Code of Criminal Procedure, 1973 [CrPC] is directed against an order dated 12.10.2022 passed by the Court of learned Judicial Magistrate, First Class, Kamrup [M], Guwahati ['the trial Court', for short] in Guwahati GRPS Case no. 119/2022. By the said order dated 12.10.2022, the learned trial Court by allowing the zimma petition filed by the respondent, has directed the Investigation Officer of the case to grant zimma of 45 nos. of bags of betel nuts/areca nuts to the respondent upon execution of an indemnity bond at the current market price of the seized betel nuts/areca nuts.

3. It is stated that on the basis of a secret information received from a reliable source to the effect that a huge quantity of betel nuts/areca nuts, suspected to be of foreign origin, had been booked by some unknown persons for transportation from Agartala to Bengaluru Railway Station with false and manipulated records showing the same as of Indian origin. Based on the information, a train being train no. 12504 DN [Agartala Bengaluru Express] was thoroughly searched after its arrival on Platform no. 3 of the Guwahati Railway Station. During such search, 45 nos. of gunny bags containing betel nuts/areca nuts, suspected to be of foreign origin, were found inside its SLR no. 135851/C. The same were accordingly seized in front of the witnesses.

3.1. Accordingly a crime case, Guwahati GRPS Case no. 119/2022 under Sections 120B/420/471/379/413, IPC has been registered.

4. During the course of investigation, the respondent preferred a zimma petition before the Court of learned Judicial Magistrate, First class, Kamrup [M], Guwahati seeking custody of the seized betel nuts/areca nuts.

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5. Mr. Phukan, learned Public Prosecutor has submitted that at the time of hearing, before the learned trial Court one Report from the Food Analyst, Government of Assam was submitted. As per the said Report of the Food Analyst, the sample, so produced, are not fit for human consumption and as such, it does not conform to the standards prescribed as per the Food Safety and Standards Regulations. Thus, the same is to be considered unsafe, according to Section 3[1][ZZ] of Food Safety and Standards Act, 2006. Mr. Phukan, has further submitted that the respondent cannot be considered to be the owner of the seized betel nuts/areca nuts on the basis of the documents he had produced before the learned trial Court. On the basis of the above two prime contentions, he has submitted that such grant of zimma to the respondent at this stage of investigation will cause prejudice to the investigation of the case and as such, the operation of the impugned order dated 12.10.2022 may be stayed in the meantime.

5.1. Mr. Phukan has asserted that the zimma of the seized betel nuts/areca nuts has not yet been handed over by the I.O. of the case to the respondent.

6. The matter would require further examination.

7. Issue notice. The notice is made returnable on 23.01.2023.

8. The learned Public Prosecutor shall take steps for service of notice upon the respondent by registered post with A/D as well as by usual process within 3 [three] working days from today.

9. Having considered the submission of the learned Public Prosecutor and on perusal of the materials brought on record with regard to the contentions raised by the learned Public Prosecutor, it is ordered that till the returnable date, the Page No.# 4/4 operation of the impugned order dated 12.10.2022 passed by the Court of learned Judicial Magistrate, First Class, Kamrup [M], Guwahati shall remain suspended.

JUDGE Comparing Assistant