

Sanjay Rajbhar vs The State Of Assam And Anr on 23 December, 2021

Author: Parthivjyoti Saikia

Bench: Parthivjyoti Saikia

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GAHC010141892021

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

Case No. : CrI.Pet./487/2021

SANJAY RAJBHAR
SON OF LATE RAMU RAJBHAR
R/O VILL- BHANGNI PT.I,P.S. DINHATA, DIST. COOCHBEHER,
WEST BENGAL.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ASI PAUL LALHLIMSANG
SIMULTAPU OUT POST
S/O LATE BIJAY CH. NATH ASSISTANT SUB-INSPECTOR OF SIMULTAPU
OUTPOST
P.S. GOSSAIGAON
DIST. KOKRAJHAR
ASSAM PIN-78336

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.Pet./488/2021

CHANDAN SAHA
SON OF LATE DARAGA NATH SAHA

R/O VILL - BHANGNI PT.I

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DIST. KOKRAJHAR
ASSAM PIN-783361

Advocate for : MR. M KHAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 23-12-2021 Heard Mr. U. K. Nair, learned senior counsel assisted by Mr. M. Khan, Advocate appearing for the petitioner as well as Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam.

This is an application under Section 482 CrPC challenging the legality and propriety of two orders both dated 07.08.2021 passed by the learned Sessions Judge, Kokrajhar in Criminal Revision No. 12/2021 and Criminal Revision No. 13/2021 respectively.

Two trucks bearing Registration No. AS-17-B-1251 and ASB-2396 were carrying tobacco leaves from the State of West Bengal to the State of Tripura. There is no alternative land road between the aforesaid two States except through the State of Assam. When the Page No.# 3/5 trucks entered into the State of Assam Police stopped the vehicles and seized the tobacco it was carrying.

The reason for seizure of the tobacco is based on a Notification issued by the Commissionerate of Food Safety, Assam. This Notification No. FSC.12/2013/11 dated 12 th January, 2021. According to this Notification, transportation, display etc. of gutkha, panmasala or any other sewing materials

containing tobacco or nicotine is prohibited. This Notification was issued pursuant to the powers conferred by Regulation 2, 3, 4 of the Food Safety and Standards (Prohibition and Restriction on Seized) Regulations of 2011 read with Section 26 of the Food Safety and Standards Act, 2006 (hereinafter referred to as the Act of 2006).

Mr. Nair submits that Section 30(2) of the Act of 2006 is the relevant provision in the instant case. The Section 30(2) of the Act of 2006 reads as under:

"30. (2) The Commissioner of Food Safety shall perform all or any of the following functions, namely:-

(a) prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such period, not exceeding one year, as may be specified in the order notified in this behalf in the Official Gazette;

(b) carry out survey of the industrial units engaged in the manufacture or processing of food in the State to find out compliance by such units of the standards notified by the Food Authority for various articles of food;

(c) conduct or organise training programmes for the personnel of the office of the Commissioner of Food Safety and, on a wider scale, for different segments of food chain for generating awareness on food safety;

(d) ensure an efficient and uniform implementation of the standards and other requirements as specified and also ensure a high standard of objectivity, accountability, practicability, transparency and credibility;

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(e) sanction prosecution for offences punishable with imprisonment under this Act;

(f) such other functions as the State Government may, in consultation with the Food Authority, prescribe."

Mr. Nair has submitted that the word 'transportation' appearing in the Notification No. FSC.12/2013/11 dated 12th January, 2021 is against the entire scheme of the Act of 2006. According to Mr. Nair, the aforesaid Notification is meant for the State of Assam because the Commissionerate of Food Safety exercises its power in order to ensure the safety of public health in the State. Mr. Nair further submits that the seized tobacco was not meant to be used in the State of Assam, as it was brought from the State of West Bengal for using the same in the State of Tripura.

Per contra, Mr. Lahkar submits that the Commissionerate of Food Safety has the duty to look after the health of the public and that is why, the aforesaid Notification dated 12 th January, 2021 was

issued.

I have given my anxious consideration to the submissions made by the learned counsels for both the sides.

The seized goods are tobacco leafs. It is not a gutkha or a panmasala or any sewing materials containing tobacco or nicotine. Those things are a combination of different materials including tobacco. But this Court is concerned with the fact as to whether the Notification dated 12th January, 2021 is meant for tobacco leafs.

Nothing is mentioned about tobacco leafs in the aforesaid Notification of 2021. The Section 30 of the Act of 2006 lays down the duties of the Commissioner of Food Safety of the State. The said provision does not empower the Commissioner of Food Safety to prevent "transportation", though this word is present in the Notification dated 12 th January, 2021.

As this Court has already observed that the power of the Commissionerate of Food Safety exercises its power within the State of Assam in the interest of the health of the people of Assam. The Commissionerate is not empowered by law to bother about the health of the people of Tripura or West Bengal because those States have their own authorities to Page No.# 5/5 think about the health of their people.

In the case in hand, the trucks were carrying tobacco leafs to the State of West Bengal in order to deliver the same in the State of Tripura. Obviously, this act, per se, is not against the health of the people of Assam. For this reason, the Commissioner of Food Safety, Assam is not empowered to prohibit transportation of tobacco leafs from the State of West Bengal to the State of Tripura via the State of Assam.

Now, this Court is of the opinion that the seizure of the tobacco leafs by Police of Gossaigaon P.S. is bad in law. Therefore, the custody of the seized tobacco shall be given to the petitioners on execution of a bond of Rs.5,00,000/- before the Officer-in-Charge, Gossaigaon Police Station.

With the aforesaid directions, the petition under Section 482 of the CrPC is disposed of.

JUDGE Comparing Assistant