

Page No.# 1/3 vs Md. Shamsuzzaman Sheikh on 18 July, 2022

Author: Kalyan Rai Surana

Bench: Kalyan Rai Surana

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GAHC010133272022

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

Case No. : CrI.Pet./642/2022

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: ISMAIL HUSSAIN
S/O- LATE ATAR ALI
R/O- VILL.- BURINAGAR
P.S. AND DIST. NALBARI
ASSAM AND PRESENTLY SERVING AS ASSISTANT SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN SERFANGURI P.S. CASE
NO. 09/2022 UNDER SECTIONS 273/420/34 OF THE INDIAN PENAL CODE

VERSUS

MD. SHAMSUZZAMAN SHEIKH
S/O- LATE MOHAMMAD ALI, R/O- KRISHNAI, IN FRONT OF KRISHNAI
POLICE STATION, P.O. AND P.S. KRISHNAI, DIST. GOALPARA, ASSAM

Advocate for the Petitioner : MR. M PHUKAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.07.2022 Heard Mr. P.N. Goswami, learned Additional Advocate General assisted by Mr. M.K. Goswami, learned APP for the State.

Page No.# 2/3 By this application filed under section 482 Cr.P.C., the State has prayed for quashing of the order dated 31.05.2022, passed purportedly under section 451 Cr.P.C. by the learned Sessions Judge, Kokrajhar, thereby granting interim custody of the areca nuts, which was seized in connection with Serfanguri P.S. Case No. 09/2022 under section 273/420/34 IPC read with section 59 (iii) of the Food Safety and Standard Act, 2006.

The learned Additional Advocate General has submitted that at this stage, the investigation is going on, which has not been completed. It is submitted that in the meanwhile the FSL report has also been received, which shows that the seized areca nut is unfit for human consumption. It is also submitted that the power under section 451 Cr.P.C. can only be invoked during enquiry or trial and not at the investigation stage. It is submitted that if at this stage, the person having the zimma of the seized areca nuts dispose all of it, the State would suffer irreparable prejudice.

Issue notice returnable on 12.08.2022.

The petitioners shall take steps within 2 (two) days for service of notice on the respondent by registered post with A/D. Liberty is granted to the State to serve notice on the respondent through Serfanguri P.S., for which steps shall be routed through the Registry of the Court and upon service, an affidavit-in-opposition shall be filed prior to the next date of listing.

Having regard to the projection that section 451 Cr.P.C. has to be invoked at the stage of enquiry and trial and not at the stage of investigation, as an interim measure, the Court is inclined to stay the operation of the impugned order dated 31.05.2022 passed by the learned Sessions Judge, Kokrajhar by Page No.# 3/3 which the custody of areca nuts seized in connection with Serfanguri P.S. Case No. 09/22 has been granted to the respondent.

List on 12.08.2022.

JUDGE Comparing Assistant