

Abhijit Saikia vs The State Of Assam And 3 Ors on 3 October, 2024

Page No.# 1/13

GAHC010007412024

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

Case No. : Crl.Pet./32/2024

ABHIJIT SAIKIA
S/O LT. D.K. SAIKIA, R/O DISPUR, GUWAHATI-6, P.S.-DISPUR, DIST-
KAMRUP (M), PIN-781006

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY, HOME DEPTT.,
GOVT. OF ASSAM, DISPUR, GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
ULUBARI
GUWAHATI-3

3:THE SUPERINTENDENT OF POLICE
KOKRAJHAR
DIST-KOKRAJHAR

4:SANJAY KUMAR ROY
SUB INSPECTOR OF POLICE
GOSSAIGAON POLICE STATION
SRIRAMPUR OUTPOST
DIST-KOKRAJHA

Advocate for the Petitioner : MS N SAIKIA, MR. A R BHUYAN,MR. R K PRADHAN,MR. A K SAIKIA

Advocate for the Respondent : PP, ASSAM, MR P TALUKDAR(R-4),MR W R MEDHI(R-4),MR. P

J BARMAN(R-4) Page No.# 2/13 BEFORE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY For
the Petitioner : Mr. A. R. Bhuyan, Advocate.

For the Respondents : Mr. P. Borthakur, Addl.PP.

Date of Hearing : 20.08.2024.

Date of Judgment : 03.10.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.

2. The present application is filed under section 482 Cr.P.C., 1973 for setting aside and quashing an FIR which was registered as Gossaigaon PS Case No.381/2023 under section 420/468/406/IPC, read with Section 13(1) of the Assam Cattle Preservation Act, 2021.

3. For proper appreciation of the issue in hand, the FIR is quoted herein below:

"The Officer-In-Charge, Gossaigaon Police Station. Gossaigaon, Kokrajhar, Assam, Sub: FIR Date 8th Dec, 2023 Ref:- STP GDE No-677 Dt-29.11.2023 Sir, I have the honour to inform you that on 29.11.2023 at 5.00 pm received information by IC Shimultapu OP from a secret source that vehicle bearing reg no Aso1EC8381 carrying beef in the name of buffalo meat from West Bengal side to Guwahati. Accordingly, the information entered in the GDE vide above reference GDE No and IC Shimultapu OP asked me to conduct naka checking.

Page No.# 3/13 Accordingly, I have conducted naka checking and after 1 hour I found the vehicle loaded with buffalo meat as per e way bill and tadx invoice produced by the driver. On asking, the driver said he loaded the meat from Kishanganj, Bihar but in papers it was found from Zaid enterprise UP to Khanapara, Guwahati. As suspicion exist, the matter was informed to Superior Officer of Police who asked to verify the same with veterinary department and accordingly, asked SDVO, Gssn to verify and he send Dr. Sikder Jahidur Islam V.O. Narayanpur, Gossaigaon who after physically verified told the meat may be beef and for further confirmation the sample of the meat should be send to Directorate of Forensic Science and Laboratory, Kahilipra, Guwahati (enclosed report). The, again the same informed to Superior Officer who asked to send the same to Directorate of Forensic Science and Laboratory, Kahilipara, Guwahati and as the item are perishable in nature so after seizing the same will be left in zimma to the driver itself with a undertaking that he will keep the meat to their destination as mentioned in the papers i.e Eden Cold Storage (P) Ltd, NH-37, Bye Pass, Khanapara Guwahati. Accordingly, I have seized the same and randomly sample drawn in the presence of a veterinary official and sent the sample to DFS Kahilipara Ghy on that night. But today I have received the expert opinion from Directorate of Forensic Science and Laboratory, Kahilipara, Guwahati which opined that the meat is beef (enclosed report). Further, it has been learnt that the owner of the Eden Cold Storage, Khanapara, Guwahati Mr. Abhijit Saikia doing

this illegal trade of beef in the Guwahati area since long after knowing that selling of beef is banned in areas where Hindu people resided. Again, he very cleverly taken beef in the name of buffalo meat and store the same in his cold storage and sell in various restaurants and others in Guwahati which attracts criminals breach of trust and cheating as well as Section 13(1) of the Assam Cattle Preservation (Amendment) Act, 2021. Therefore, I request your to take necessary legal actions against the below noted accused persons and others involved by registering a case under the proper section of law.

Name and address of the accused persons:-

1. Abhijit Saikia, S/o Lt. Dhubra Kumar Saikia of Ganeshguri, near Raddhani Masij Debadaru Path H/No.7, PS- Dispur, Dist- Kamrup (M), (owner of the Eden Cold Storage)

2. Sanidul Islam, S/o - Sanowar Hussain of Kumarikata, PS- Joghihopa, Dist- Bongaigaon (driver of the vehicle)

3. Tupidhan Gogoi S.o Lt. Bogadhan Gogoi, Sonapur PS- Sonapur, Dist- Kamrup (M), (Manager of the Eden Cold Storage) Page No.# 4/13 Yours faithfully In-Charge Shimultapu Out Post.

Dist- Kokrajhar, Assam".

4. Mr. Borthakur, learned Additional Public Prosecutor has also submitted a report by the Superintendent of Police, Kokrajhar before this Court which was prepared by Sub Divisional Police Officer, Gossaigaon on the direction of the Superintendent of Police, on a complaint lodged by the mother of the petitioner alleging illegal arrest of the petitioner.

5. It is argued by the learned counsel for the petitioner that the FIR, makes it clear that while the alleged beef was seized, in a packaged condition with a statutory disclosure to the effect that the meat is buffalo meat with further disclosure of the manufacturers/packager of such meat and it is also an admitted position that the aforesaid packaged meat was transported having e-way bill, tax invoice and was transported through Assam, therefore, the state police shall have no jurisdiction to investigate the matter inasmuch as the in the backdrop of the FIR, at best it can be a case under the Food Safety and Standard Act, 2006 (hereinafter referred to as Act, 2006), more particularly misbranding.

6. It is contended by the learned counsel for the petitioner that by no stretch of imagination, any offence under Section 420/406/468 of IPC can be said to be committed, even if the allegation made in the FIR is taken at its face value. It is the contention of the petitioner that no offence under Section 13(a) of the Assam Cattle

Preservation Act, 2021(hereinafter referred as Act, 2021) is also made out being a packaged meat declared in its label to be a buffalo meat. According to the learned counsel for the Page No.# 5/13 petitioner, it is not the case that the petitioner had manufactured or packaged such product rather it is an admitted position that it was transported from a manufacturer. Therefore, on this count also, no case as alleged in the FIR is made out. It is the further contention of the learned counsel for the petitioner that even if the entire facts are treated to be correct, at best it can be a case of misbranding and such offence is required to be dealt with under the Act, 2006 and in such an eventuality, the police authorities under the Home Department shall have no jurisdiction to proceed in a manner it has proceeded and therefore, the entire FIR is liable to be quashed.

7. Per contra Mr. Borthakur, learned Additional Public Prosecutor relying on the case diary produced argues that initially on the basis of source information and on the basis of reasonable ground, a naka was laid down and the entire buffalo meat weighing 2630 Kgs and e-way Bill vide E-bill No. 451390764711 along with the vehicle bearing registration No. AS-01-

EC-8381 were seized and seizure list was also prepared. Random samples were drawn for forensic analysis and the driver was allowed to take the zimma of the seized meat along with the vehicle and to take the meat to its destination i.e. Eden Cold Storage, Khanapara with an undertaking to produce the same before the Police/Court as and when required.

8. Mr. Borthakur, learned Additional Public Prosecutor contends that as the forensic investigation reports dated 07.12.2023 and 03.01.2024 have confirmed the presence of cow antigen, it clearly suggests that the petitioner was involved in carrying/transporting/supplying beef in the name of buffalo. Accordingly, Mr. Borthakur, learned Additional Public Page No.# 6/13 Prosecutor the petitioner's firm is directly involved in carrying/storing/supplying beef, which is specifically prohibited under Section 8 of the Act, 2021 and punishable under Section 13(1) of the Act, 2021. During the Investigation, serious doubt was raised as regards the genuineness of the e-way bill and tax invoices etc. and the other documents used for the transportation of beef in the name of buffalo meat and the petitioner is also liable for criminal breach of trust of consumer i.e. non-beef eating communities, by doing illegal trade of beef. Therefore, a prima facie case has been made out under Section 402/420/468 of IPC read with Section 13(1) of the Act, 2021.

9. According to Mr. Borthakur, learned Additional Public Prosecutor, the applicability of Act, 2006 is totally misconceived and misplaced inasmuch as the intent and knowledge of the petitioner can easily be inferred from the act of mislabeling the beef as buffalo meat, which clearly indicates an attempt to circumvent the legal restrictions of beef transportation and sale of beef by virtue of the Act, 2021. According to Mr. Borthakur, learned Additional Public Prosecutor, the argument of the learned counsel of the petitioner as regards the authority and jurisdiction of the investigating officer to search and seize also has no substance inasmuch as it prima facie discloses commission of offences under IPC as well as the Act, 2021 as registered.

10. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the material available on record.

11. The principle of exercise of power under section 482 Cr.P.C. to quash Page No.# 7/13 FIR and charge sheet, based on the ratio laid down by the Hon'ble Apex Court can be summarized in the following manner:

I. When the allegations made in the FIR or in a complaint is taken at their face value and accepted, it does not prima facie constitute any offence or make out a case against the accused. The court is to see that if the complaint/FIR is taken at their face value, no cognizable offence is made out.

II. Such power can also be exercised when the facts narrated are absurd and inherently improbable, or manifestly attended with malafide or with an ulterior motive.

III. However, while exercising its power the court is not to embark upon an enquiry as to the reliability or genuineness of the allegation made in the FIR/complaint.

IV. It is also well settled that such power is to be sparingly exercised and in exceptional cases, so as to avoid miscarriage of justice and also in a situation where there is abuse of process of the court.

V. The power under section 482 Cr.P.C being wide, so while exercising such extraordinary power the court must be cautious and need to be very diligent.

12. Now let this court consider the factum of the present challenge based on the aforesaid principles of law.

13. From the FIR, it is seen that the basic allegations are to the following effect:-

Page No.# 8/13 i. The vehicle bearing Registration No. AS-01- EE 8381 carrying buffalo meat from West Bengal, though actually it was beef. ii. Naka was laid on the basis of secret information. On naka checking, it was found that the vehicle was loaded with buffalo meat as per e-way Bill and tax invoice produced by the driver. iii. On suspicion, matter was informed to superior officer. The Sub Divisional Veterinary Officer, Gossaigaon send one Veterinary Officer for physical verification and after physical verification, the said Officer informed that the meat may be beef.

iv. For confirmation, sample was sent to the Directorate of Forensic Science and Laboratory, Kahilipara.

v. Expert opinion has been received from the Directorate which opined that serological examination gave positive result of presence of cow antigen.

14. Section 415 IPC defines cheating. The essential ingredients of cheating are that deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

15. Section 468 of IPC prescribes punishment when forgery is committed by forged document or forged electronic document for the purpose of cheating. Forgery is treated under Section 463 of IPC as an offence when anybody makes any false documents etc., with an intention Page No.# 9/13 to cause damage to public or any person amongst other.

16. Section 8 of the Act, 2021 mandates that no person shall directly or indirectly sale or offer or expose for sale or buy beef or beef products in any form except at places permitted to do so by the competent authority. It is also a mandate under the Act that no such permission to sale or expose for sale or buy beef or beef product shall be granted in such area or areas which are predominately inhabited by Hindu, Jain, and Sikh and other non-beef eating communities etc. Thus, any purchase/sale/or exposure to the sale of beef or beef products in any form is prohibited, except in the area notified. In the case in hand, the alleged beef was seized during transportation in a packaged condition and such seizure was made on the basis of secret information/suspicion.

17. The Act, 2006 was enacted to consolidate the laws relating to food safety and standard. Food has been defined to be any substance which is intended for human consumption but does not include amongst other any animal feed, live animals. The said Act, 2006 defines different standard and safety of food and also prescribes the authority to monitor and implement the Act. Chapter IX consisting of Section 48 to 67 of the Act, 2006 deals with offences and penalties.

18. From the argument and the materials available on record, there is no doubt that the meats were in a packaged condition and it was declared to be a buffalo meat and it had e-way bill for transportation. So, apparently, in the aforesaid backdrop, the argument of the learned counsel for the petitioner seems impressive that the procedure as mandated under Chapter IX of the Act, 2006 should be adopted and not Page No.# 10/13 the procedure mandated under Cr.PC and that the verification can be conducted, whether there is misbranding or not, by the authorities under the Act, 2006 and not by the investigating authority empowered under the provision of Cr.PC. However, this Court cannot be un-mindful of two facts i.e. the allegation that e-way bill was the forged document and that only to cheat people / consumer, the beef is sold as buffalo meat and that it was not transported from Uttar Pradesh as disclosed in the label of the product but from Bihar. In view of such contention and materials collected, this Court at this stage of investigation cannot conclude safely, within the parameters of its power under Section 482 of Cr.P.C. that the e-way bill is a genuine one and that it is a food product manufactured in an authorized place and therefore, it is a misbranding of food product, which is required to be dealt with under the Act, 2006. This Court cannot make a roving and fishing enquiry while exercising its power under Section 482 Cr.P.C. as regards the aforesaid issue.

19. Law is well settled that an FIR is not an encyclopedia and is not required to disclose all the details about the offence. It is also equally well settled that in such a situation, the investigating authority should be allowed to investigate and complete the investigation. It is true that High Court in exercise of its power may intervene in the investigation process, if it appears to be biased, or conducted in a malafide manner, or such investigation lacks a legal basis. In the backdrop of the determination made hereinabove, this Court finds that prima facie case under Section 468 and 420 of IPC is made out more particularly, in the backdrop of assertion of investigating authority that the e-way bill itself is a forged one and that beef was transported in the name of buffalo by using the forged Page No.# 11/13 e-way bill and that it was transported from Bihar and not from Uttar Pradesh as disclosed in the package. If prima facie such offence is made out, then it is inextricably connected to an offence under Section 8 of the Act, 2021 inasmuch as the Act'2021 prohibits sale of beef without authority.

20. It is recorded herein that to uphold the contention of the petitioner, this Court is to come a definite conclusion that the seized meat was a packaged food manufactured by authorized manufacturer and was transported on the basis of genuine e-way bills. It is the considered opinion of this Court, such determination cannot be made in exercise of power under Section 482 of Cr.P.C. more particularly, when it is specifically projected by the Investigating Authority that during investigation, they could gather that the e-way bill itself is manufactured one and that the driver disclosed that meat was transported not from the State of Uttar Pradesh as declared, but from the State of West Bengal.

21. Coming to Section 406 of the IPC, it deals with punishment for criminal breach of trust and the offence of criminal breach of trust is dealt under Section 405 of IPC.

22. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:

- A. There must be an entrustment of property or dominion over it upon the accused.
- B. The accused upon whom such property is entrusted

has dishonestly used or disposed of the property in violation of any provision of law which prescribed the mode in which such Page No.# 12/13 trust is to be discharged or of any contract made defining the discharge of such trust.

23. In the considered opinion of this Court, a bare reading of the FIR or the material placed on record including the case diary, this Court has not found any ingredient of Section 405 of IPC and therefore, in the considered opinion of this Court, no case under Section 406 of IPC is made out.

24. This Court also has not found any material to come to a conclusion that the investigation is either biased or malafide or such investigation lacks a legal basis.

25. Therefore, in the totality of the matter, this petition deserves to be dismissed except the fact that no case under Section 406 of IPC is made out against the petitioner. Accordingly, the present

petition stands dismissed in the aforesaid terms.

26. While parting the with the record, it is reiterated that the point raised in this petition including the authority of the investigating agency to conduct the investigation and the non applicability of provision of IPC as well as applicability of provision of Act, 2006, can very well be taken at appropriate stage including before the learned trial Court after filing of Final Form by the investigating authority and this order shall not be treated as a comment on the arguments advanced in this regard inasmuch as this petition under Section 482 of Cr.P.C is dismissed for the reason that prima facie case under Section 420/468 read with Section 8 of the Act, 2021 is made out. Such determination is not a comment on the merit of the investigation or the materials that may be relied on by the investigating authority.

Page No.# 13/13

27. Case diary is returned back to Mr. P. Borthakur, learned Additional Public Prosecutor for the State.

JUDGE Comparing Assistant