

Maynal Ali vs The State Of Assam And Anr on 3 June, 2024

Page No.# 1/4

GAHC010043142024

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

Case No. : CrI.Pet./242/2024

MAYNAL ALI
S/O SAHEB ALI
VILL- POPRAGOAN PART-I
PS. BONGAIGAON
DIST. BONGAIGAON, ASSAM

VERSUS

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

2:TINTUMANI DEKA
S.I. (P) GOSSAIGAON P.S.
DIST. KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

03.06.2024

1. Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State.

Page No.# 2/4

2. The present application under Section 482/401 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India is filed assailing the order dated 15.02.2024 passed by the learned Sub Divisional Judicial Magistrate (M), Gossaigaon, whereby, the learned Court below rejected the zimma petition of the petitioner for custody of the seized areca nuts in connection with Gossaigaon P.S. Case No. 387/2023 registered under Section 379/411/420/34 of IPC read with Section 59 of Food Safety and Standard Act, 2006.

3. The basic reasons of rejection of such application for zimma of the areca nuts was that no satisfaction could be drawn whether the seized material would be used as raw material for the manufacturing of non-edible product and not for human consumption.

4. The learned counsel for the petitioner submits that the report dated 07.02.2024 submitted by the investigating authority, shows that the petitioner is the absolute owner of the seized areca nuts and therefore, the impugned order dated 15.02.2024 is not sustainable in the eye of law and liable to be set aside and quashed.

5. Another contention of the learned counsel for the petitioner is that the learned Court below while rejecting the prayer of the petitioner for zimma of the areca nuts failed to take into consideration of the SOP dated 16.09.2021 issued by the Government of Assam.

6. The learned Additional Public Prosecutor submits that the Magistrate has rightly looked and considered the fact that areca nuts seized are not human consumable and if such areca nuts are given custody that may create public health hazard. Accordingly, he submits that the present petition is devoid of any merit and is liable to be dismissed.

7. This Court has given anxious consideration to the submissions made by the Page No.# 3/4 learned counsel for the parties. Also perused the materials available on record.

8. The Hon'ble Apex Court in the case of Sunder Bhai Ambala Desai Vs. State of Gujarat reported in (2002) 10 SCC 283, while dealing with the power of a magistrate under section 451 and 457 Cr.P.C., regarding disposal of seized material has laid down the following proposition of law that:-

I. The power under section 451 Cr.P.C and 457 Cr.P.C., should be exercised expeditiously and judiciously with the object that the owner of article should not suffer for it being remaining unused or by its misappropriation, II. The Hon'ble Apex Court at paragraph 17 observed that whatever the situation be, it is of no use to keep the materials more particularly seized vehicles at police station for a long period and a magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time.

III. Referring to section 451 Cr.P.C of the paragraph 5 of the judgment Sunderbhai Ambala Desai (supra) the court opined that the power under section 451 Cr.P.C is required to be exercised expeditiously and judiciously with the object that the owner

of the article would not suffer because of its remaining unused or by its misappropriation.

9. In the considered opinion of this court the petitioner has been able to establish that he is the owner of the seized areca nuts. Therefore, taking into note the principles laid down in *Sunderbhai Ambala Desai (Supra)*, this court is of the view that the petitioner is entitled for the custody of the areca nuts.

10. Similarly, the ground whether the areca nuts will be used for industrial purpose or for human consumption cannot be a ground for rejection of zimma. In the event, the areca nuts which are not fit for human consumption and if used for human consumption shall give rise fresh cause of action to take against those erring person under appropriate provision of law. In view of the aforesaid, this Page No.# 4/4 Court is of the view that the learned Court below has committed serious error of law in not granting the zimma of the areca nuts.

11. In view of the aforesaid reasons, this court is of the view that the seized areca nuts be released to the petitioner with the following conditions:

I. The investigating authority shall prepare proper panchnama of such articles take photographs of such article and get the signature of the representative of the petitioner and the petitioner shall give a bond that such articles should be produced on issuing a bond of Rs.30,00,000/-.

II. The investigating authority may keep some sample of the aforesaid areca nuts for further proceeding like sending it to the forensic laboratory for any purpose relating to the investigation including confirmation of its place of origin.

With the aforesaid the present petition stands allowed.

JUDGE Comparing Assistant