

Md. Mahbub Alam vs The State Of Assam on 6 January, 2022

Author: Rumi Kumari Phukan

Bench: Rumi Kumari Phukan

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GAHC010003092022

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

Case No. : CrL.Rev.P./7/2022

MD. MAHBUB ALAM
S/O MD. CHAMIR UDDIN
R/O VILL- BHAGAN
P.O. KATHALTALI, P.S. BAZARICHERRA
DIST. KARIMGANJ, ASSAM,
PIN-788725

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE RUMI KUMARI PHUKAN

ORDER

Date : 06-01-2022 By way of this petition under Section 482 of the Cr.P.C, the petitioner prays for quashing of the impugned order dated 24.12.2021 passed by the Sub-Divisional Judicial Magistrate(S) Karimganj in Bazaricherra, pertaining to Bazaricherra P.S. Case No.214/2021, under Sections 418/411 of the IPC.

Heard Mr. H.R.A. Choudhury, the learned counsel for the petitioner. Also heard the Page No.# 2/3 submission of Mr. B. Sarma, the learned Addl. P.P., Assam, representing the State/respondent.

The Police officer of Kathaltali, Watch Post leading with O/C, Bazaricherra P.S, at the time of regular checking found 91 bags of suspected dried Areca betel nut on suspicion, to be Burmese betel nut from the house of the present petitioner Mahbub Alam. As his reply to the police was not satisfactory regarding the documents and possession of the articles, the aforesaid betel nuts were seized and on 08.11.2021, a case was registered against the petitioner as Bazaricherra Police Station Case No. 214/2021, under section 418/411 of the IPC. The petitioner herein filed a petition praying for zimma of the said seized article and the learned Court after obtaining a report from the I.O. passed an order dated 15.11.2021 and thereafter hearing the learned counsel for both the parties zimma was given to the petitioner with certain conditions not to sale the articles in the market till completion of the investigation and he will produce the said articles as and when required before the Court. Subsequent there to, the Court on the basis of the report of the I.O., passed order dated 24.12.2021, that as per the report received from the Food Safety Officer, Karimganj, the sample of the said supari is not suitable for human consumption, and directed the I.O for destruction of the said articles as per procedure with intimation of the registered owner to produce the same by fixing 04.01.2022 for report.

In terms of the aforesaid order, now the I.O. has served notice upon the petitioner to produce the seized betel nut before the I.O. Challenging the order the petitioner has approached before this Court that once the petitioner was given the zimma of the betel nuts after hearing both parties, but subsequent order dated 24.12.2021, passed only at the instance of the I.O. and the petitioner was not heard on the matter.

The petitioner contends that the said order is illegal as much as, the Court has passed the order behind the back of the petitioner without giving him an opportunity to be heard on the matter while passing the order for destruction of the seized article which is already given to him.

Considering the submission of the learned counsel for the petitioner and learned counsel for the State respondent and after perusal of the relevant documents and orders of the Courts, it reveals that the interim zimma order of seized betel nuts was given to the Page No.# 3/3 petitioner on 15.11.2021 but at the time of passing the second order no notice was served to the petitioner on the matter, about proposed destruction of the seized articles.

The learned counsel for the petitioner has drawn the attention of the Court that under section 38(4) of the Food Safety and Standard Act, provides that the Food Safety Officer before destruction of the food articles is required to give notice to the owner of the articles prior to destruction but same is not adhere to in the present case. On the other hand, it also contended that the present case was not registered under the said Act, but it proceeded with the matter and no opportunity was given to the petitioner prior to passing of such order where it is unfit for him.

The crux of the matter lies that the impugned order was passed without hearing the petitioner, and he is the aggrieved person in the entire matter.

Having regard to all the matters on record and the Provision under Act as indicated above, this Court is of the opinion that the petitioner should be given an opportunity of being heard on the matter prior to passing of the order of destruction on the report of the I.O. The learned Court has considered the provision of the Food Safety Act also.

Accordingly the impugned order dated 24.01.2021, is hereby quashed and set aside with a direction to the learned trial Court to give an opportunity to the petitioner of being heard in this regard and thereafter the learned trial Court will pass an appropriate order as per the provision of law.

The petitioner will appear before the trial Court within 15 days from today and the trial Court will pass an effective order after hearing both the parties.

JUDGE Comparing Assistant