

Dilip Saha vs The State Of Assam on 10 March, 2022

Author: Rumi Kumari Phukan

Bench: Rumi Kumari Phukan

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GAHC010227142021

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

Case No. : CrL.Rev.P./12/2022

DILIP SAHA
S/O LATE KESHAB LAL SHA
R/O RAILWAY COLONY, DIPHU
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P C DEY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

ORDER

10.03.2022.

Heard Mr. P.C. Dey, learned counsel for and on behalf of the petitioner and Mr. P.S. Lahkar, learned counsel for and on behalf of the State respondent.

2. The present petition has been preferred under Section 397, read with Section 401 of the CrPC, challenging the order dated 29.09.2021, passed by the learned CJM, Karbi-Anglong at Diphu, in PRC Case No.25/2021, whereby the learned Court rejected the zimma petition filed Page No.# 2/4 by the petitioner, praying for zimma of the seized articles like Pan Masala, Gutka, etc.

3. The petitioner herein is a businessman by profession and he is the proprietor of M/s. Saha Pan Shop, situated at Diphu Daily Market and he deals with wholesale business of selling betel nut, pan-masala like Paras Pan Masala, Sikhar-1000, Rajanigandha, SS-1 Tobacco, etc., which he used to purchase from the registered suppliers like M/s. Ganapati Trade & Agencies, situated at H.B. Road, Fancy Bazar at Guwahati.

4. On 21.05.2020, the police officials from Diphu T.O.P. made a search in the shop premises of the petitioner and recovered huge quantity of articles i.e. Paras Pan Masala "lose 2 plastic basta" - 150 packets, Sikhar 1000 "per cartoon contain 50X24" - 9 cartoons, Rajanigandha "per cartoon contain 60x54 pouches" - 2 cartoons and SS-1 Tobacco "per basta contain 2 bags" 50x24 - 4 Basta. Police made the seizure of all the above articles and prepared a seizure list and an FIR was lodged against the accused/petitioner for violating the law during the lockdown period and selling of illegal Gutka items among the people.

5. The petitioner filed a zimma petition before the Court of learned CJM, Karbi-Anglong at Diphu, praying for zimma of the seized materials and the same was rejected by the learned trial Court vide order dated 08.06.2020. The aforesaid order was assailed before the learned Sessions Court, Karbi-Anglong at Diphu by way of revision and the learned revisional Court also rejected the prayer made by the petitioner.

6. The above order was assailed before this Court by filing the Crl. Petition No.29/2021 and this Court, by the order dated 03.02.2021, remanded the matter to the learned trial Court to decide the matter afresh, on the ground that has been taken by the petitioner as to whether the impugned notification dated 29.11.2019, issued by the Commissioner of Food Safety, Assam, which was valid at that point of time and was to expire after one year of the publication of the notification.

7. Pursuant to the said order, while the petitioner approached the learned trial Court, on examination of the matter and after obtaining the information that on approval of the Govt. of Assam, the Commissioner had issued another notification dated 12.01.2021, extending the validity of the notification for another one year.

8. The petitioner is again before this Court with the present petition contending that the Page No.# 3/4 seized articles were perishable in nature and the petitioner should be given the zimma of the articles expeditiously, under the provision of Section 451 of the CrPC. Another ground that has been assailed is that the Food Safety and Standards Act, 2006 (in short 'the FSS Act') and the Food Safety and Standards (prohibition and Restrictions on Sales) Regulation, 2011 (in short 'the FSS Regulation') are applicable only to the food products, as defined and standardized under the said FSS Act and the FSS Regulation, but the same has no applicability in respect of the trade and commerce, production, supply and distribution of those products.

9. It is contended that the tobacco products are dealt with under the Special Legislation namely the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (in short 'the COTPA') and hence the Commissioner of Food Safety, Assam, has no jurisdiction or authority to issue the notification dated

12.01.2021, in respect of the said products like Gutka, Pan Masala, etc. under the provision of FSS Act.

10. I have heard the submission of learned counsel for the petitioner and also the learned counsel for the State respondent.

11. As the impugned notification dated 12.01.2021 was extended only for one year, so this Court directed the prosecution to obtain instruction as to whether the term of the said notification has been expired or extended further. Accordingly the learned Addl. P.P., Assam has produced the relevant notification dated 27.01.2022, issued by the Commissioner of Food Safety, Assam, whereby under Section 30(2) of the FSS Act, prohibited and restricted the manufacture, storage, transportation, display, distribution or sale of Gutka, Pan Masala or any chewing materials, containing tobacco and/or nicotine as ingredients, available in market, in the State of Assam, vide notification No.FSC.12/2013/153.

12. Going by the notifications including the present one, it reveals that the prohibition is still prevailing regarding selling, storing, etc. of Gutka Pan-Masala, etc. and the subject matter of the case is also illegal sell of such articles by the accused/petitioner. The learned trial Court has also refused to give zimma of the aforesaid articles to the petitioner, in view of the prohibition made by the prevailing notifications.

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13. Section 29 of Chapter VII of the FSS Act, 2006, prescribes about the Food Authority and the State Food Safety Authorities, responsible for the enforcement of this Act. Under Section 30 of the FSS Act, the State Government can appoint the Commissioner of Food Safety for sufficient implementation of Food Safety and Standards Act and the Regulation made there under. As per Section 30(2) of the FSS Act, the Commissioner of Food Safety can 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.

14. In the present case, the Commissioner of Food Safety, Assam has issue the said notification in terms of Section 30(2) of the FSS Act and the learned trial Court has passed the order on the basis of said notification.

15. The learned counsel for the petitioner has however assailed the notification issued by the Commissioner, as has been mentioned above that the Commissioner has no authority to issue such notification, prohibiting sale of Pan Masala, etc. are the articles which comes under the purview of Gutka. But the said aspect can only be challenged before the proper authority, assailing the virus of the Act and the Notification and neither the trial Court nor this Court can examine the validity of the said Notification, issued by the Commissioner of Food Safety, Assam, in a revision petition.

16. Taking note of all the above, this Court is of the opinion that there is no illegality in the order so passed by the learned trial Court as well as by the learned revisional Court (in the earlier).

17. Accordingly the present petition stands disposed of with a liberty to the petitioner to assail the virus of the notification, before the competent authority.

JUDGE Comparing Assistant