

Abhijit Saikia vs The State Of Assam And 3 Ors on 19 March, 2024

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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

Advocate for the Respondent : PP, ASSAM

BEFORE

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ORDER

Date : --19.03.2024

1. Heard Ms. N. Saikia, learned counsel for the petitioner.
2. The petitioner Sri Abhijit Saikia has filed this application u/s 482 Cr.PC with prayer for quashing the FIR being Gossaigaon P.S. Case No. 383/2023 registered u/s 420/406/468 IPC read with Section 13(1) of the Assam Cattle Preservation Act, 2021.
3. The respondents are represented by the learned Addl. PP Mr. B.B. Gogoi.
4. The FIR unfolds that on 29.11.2023 at about 5 PM, an information was received by the IC of Shimultapu OP from a secret source that a vehicle bearing registration No. AS01EC8381 carrying beef in the garb of buffalo meat (red beef or buff) from West Bengal was proceeding towards Guwahati. A naka checking was held by the investigating team, and after 1 hour, the Investigating Officer (IO in short) found the vehicle loaded with 'buffalo meat' as per e-way bill and tax invoice produced by the driver. On being confronted, the driver said that he loaded the meat from Kishanganj, Bihar, but in papers, it was found that the meat was loaded from Zaid Enterprise, UP for transportation to Khanapara, Guwahati.
5. Suspicion arose and the matter was informed to the superior officer of Page No.# 3/10 police who gave a direction to the veterinary department to test and verify the 'meat', and accordingly SDVO, Gossaigaon was asked to verify and Dr. Sikder Jahidur Islam V.O., Narayanpur, Gossaigaon physically verified and after examination, remarked that the meat may be beef and for further confirmation, a sample of the beef was sent to Directorate of Forensic Science and Laboratory, Kahilipara, Guwahati. This was informed to the superior officer who asked to send the sample to the Directorate of Forensic Science and Laboratory, Kahilipara, Guwahati and as the item was perishable in nature, so after seizure of the same, it was directed that the meat has to be handed over to the driver with an undertaking that the meat would be kept in the 'Eden Cold Storage (P) Ltd.', NH-37, Bye Pass, Khanapara, Guwahati which was the destination where the meat was to be delivered.
6. The meat was seized and random sample was drawn in presence of the veterinary officials and the police forwarded the sample to the Directorate of Forensic Science and Laboratory (DFS in short), Kahilipara, Guwahati at night. An expert opinion was received from the DFS and it was disclosed that the meat seized in connection with this case is beef. The present petitioner is the owner of the Eden Cold Storage (P) Ltd. at Khanapara and he has been indulging in such illegal trade of beef in the name of buffalo. He has been trading meat in an area populated by Hindus, where beef is banned. The petitioner has allegedly Page No.# 4/10 acted in a subterfuged manner and in the garb of buffalo meat, beef was stored in his cold storage and sold at various restaurants and other locations in Guwahati. This FIR was registered as Gossaigaon P.S. Case No. 381/2023 and u/s 420/406/468 IPC and FIR was lodged by SI(P) Writuparna Deka of Shimultapu OP.

7. It is argued on behalf of the petitioner that the petitioner has been involved in business of cold storage without any blemish. When the petitioner was called by the SI Sanjoy Kumar Roy on 09.12.2023 at about 6:30 PM, he himself went to the Basistha police station and as requested by the SI Mr. Sanjoy Kumar Roy, the petitioner brought him to the cold storage. The investigating team went to the factory premises and searched all the computers and, data were transferred to their pen drive and the investigating team sealed one cold storage compartment with allegations that packaged beef was sold by the petitioner. The petitioner was taken to the Srirampur Outpost and the petitioner's vehicle ASO1-BR-4071, and I20 sports car of Hyundai make was seized by the police and one compartment of the Eden Cold Storage was also seized by the police. The petitioner was made to wait till 10:30 next morning and then, he learnt that an FIR has been drafted and he was to be forwarded to the Kokrajhar Court. It is alleged that no transit remand was taken from the learned CJM, Kamrup(M) before transporting the petitioner from Guwahati to Srirampur Out Post of Page No.# 5/10 Gossaigaon police station. It is submitted that the petitioner has valid licence under the FSSAI being FSSAI Licence No. 10018033000342 issued by the Govt. of India under the Food Safety Standard Authority of India Licence, 2006. Their meat was hygienically packed and it is nothing but buffalo meat (buff).

8. It is averred that the investigation was erroneously conducted. Only the food analyst is eligible for examination of food u/s 38 of the FSSAI Act, 2006. The sample was illegally collected and forwarded for forensic examination. The petitioner is also in possession of trade licence issued by GMC. The petitioner is erroneously booked u/s Section 13(1) of the Assam Cattle Preservation Act because as per Section 11(1) of the Assam Cattle Preservation Act, 2021, only the Sub Inspector has authority in his jurisdiction i.e. Gossaigaon Outpost. Moreover, the alleged meat transported in the truck was frozen meat and not live cattle. The SI of Shimultapu OP acted beyond his jurisdiction. The petitioner has incurred heavy loss due to the seal and seizure of the compartment and the frozen meat. The IO has no jurisdiction and authority u/s 102 of the Cr.PC to seize any immovable property. The cold storage was sealed and items like prawn, basa fish, lobster, squid, chicken topping, chicken momo, buffalo, chicken LBL, chicken drumstick, chicken wings, chicken LBL are stored and the petitioner had to incur loss of crores of rupees. The petitioner was subjected to inhuman behaviour by the IO. To his relief the petitioner was granted bail by Page No.# 6/10 this Court vide order dated 05.01.2024, Annexure-6. The Cattle Preservation Act, 2021 deals with transportation of slaughtered or live cattle and sale of beef of freshly slaughtered animal but the meat in connection with this case is not the meat of freshly slaughtered animal or beef but it was frozen buffalo meat. As per Section 11(1) of the Assam Cattle Preservation Act, 2021 (the Cattle Preservation Act for short) the police officer can inspect any premises within the local limits of jurisdiction which is not in this case. The processed food is covered by Food Safety Standard Act, 2006. All processed meat for human consumption comes under the Food Safety Standards Act of 2006. The petitioner has not violated any laws as per Section 31 of the Food Safety and Standards Act, 2006 as he was the licence holder of the Eden Cold Storage Private Ltd. Under the Food Safety and Standards Act (Food Safety Act for short), only the Food Safety Officer has the authority to take sample or seize any article or to search, seize or investigate prosecute any person in violation of the Food Safety Act as prescribed u/s 37, 38 and 41 of the Act. The Section 89 of the Food Safety Act has an overriding effect over all other food related laws both under Central and State Government. As the respondents have acted in gross violation of the Act, only to pressurise the petitioner and his

family members for illegal gratification, the FIR is liable to be quashed as the action of the respondents are arbitrary, illegal and unconstitutional and in utter violation Page No.# 7/10 of Articles 14, 19, 21, 22(1) and 311 of the Constitution of India. Mental and physical torture was also exercised on the petitioner.

9. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Nevada Properties Private Ltd. V. State of Maharashtra, reported in AIR 2019 SC 4554; wherein it has been held and observed that immovable property cannot be seized and sealed by the police. The learned counsel for the petitioner has prayed to quash the FIR and has also prayed for stay of the investigation.

10. The learned Add. PP Mr. B.B. Gogoi has raised serious objection stating that investigation cannot be interfered with. It is submitted that this case is at its nascent stage of investigation and it is not discernible at this juncture, if the IO has transgressed his jurisdiction, by investigating into a case beyond his or her jurisdiction.

11. I have considered the submissions at the Bar with circumspection. The petitioner is booked u/s 420/406/468 IPC read with Section 13(1) of the Assam Cattle Preservation Act, 2021. The petitioner is not booked for violation of any offence under the Food Safety Act. It cannot be dismissed at this juncture that no case u/s 420 or 468 lies against the present petitioner. There is substance in the argument of the learned counsel for the petitioner that there is no allegation against him of any offence u/s 406 of the IPC. There is no allegation of any Page No.# 8/10 criminal breach of trust committed by the petitioner. However, at this juncture it cannot be held conclusively that the petitioner is not liable for offences u/s 420/406/468 IPC, as well as under Section 13(1) of the Cattle Preservation Act. Now, it also cannot be held that the IO has traversed beyond his jurisdiction because this case falls under the jurisdiction of Gossaigaon P.S. and as per the Cattle Preservation Act, investigation can be conducted by the IO only within the local limits of his / her jurisdiction. The learned counsel for the petitioner has disputed the issue of booking the petitioner only under the Cattle Preservation Act. The petitioner is also booked under Sections 420, 406, 468 IPC and so the argument that the IO has transgressed his jurisdiction is thus negated.

12. I have relied on the decision of the Hon'ble Supreme Court in the Nevada Properties Private Ltd. (supra) wherein it has been held and observed that:-

"If the argument of the appellant and the State of Maharashtra is accepted then there was no need for the legislature to have introduced Chapter VIIA. It would also be pertinent to mention that the power of attachment and forfeiture is given to courts and not to police officer. As pointed out in the judgment of my learned brother, if a police officer is given the power to seize immovable property it may lead to an absolutely chaotic situation. To give an example, if there is a physical fight between the landlord and the tenant over the rented premises and if the version of the appellant is to be accepted, the police official would be entitled to seize the tenanted property. This would make a mockery of rent laws. To give another example, if a person forges a will and thereby claims property on the basis of the forged will, can

the police officer be given the power to seize the entire property, both movable and immovable, that may be mentioned in the will? The answer has to be in the negative. Otherwise it would lead to an absurd situation which could never have been envisaged by the Legislature. The power of seizure in Section 102 has to be limited to movable property.

As far as the meaning of property in Section 452 of the Cr.P.C. is concerned, that is not a question referred to the larger Bench and therefore, I would refrain from saying anything about that. In view of the above, I would answer the reference by holding that the phrase 'any property' in Section 102 will only cover moveable property and not immovable property."

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13. In the instant case the IO has sent a report as called for by the learned Addl. PP. The report reflects that the cold storage has been seized and sealed in connection with this case with allegations of using the cold storage to store beef and to supply the same to various hotels and restaurants violating the provisions of Section 8 of the Cattle Preservation Act. It is also reflected through the report that the cold storage is also used to store paneer, pop corn, chicken etc. together with the beef. I have also considered the submissions that the articles stored in the cold storage are perishable articles and they may get damaged. It has to be borne in mind that the cold storage is an immovable property. In the light of the decision of the Hon'ble Supreme Court in Nevada Properties Private Ltd. (supra), it is held that the police officer has no jurisdiction to seize, seal and lock the cold storage which is an immovable property.

14. The IO is hereby directed to remove the lock and seal of the Eden Cold Storage. So far as the allegedly seized beef is concerned, this Court refrains from passing any order relating to the seizure of the beef as well as the procedure of investigation adopted by the police officer. No order of stay of the investigation is passed as no case for interim stay has been made out at this juncture.

Notices have already been issued to respondent No. 4.

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JUDGE Comparing Assistant