

GAHC010064872024



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

Case No. : Crl.Rev.P./127/2024

RAHIM KHAN
S/O SORHAB KHAN
VILL- NO. 1 MONDIA
P.S. BAGHBOR
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 26.04.2023

1. Heard Mr. F Haque, learned counsel for the petitioner.
Also heard Mr. K. K. Parshar, learned Additional Public Prosecutor for the
State respondent.

2. This criminal revision petition is filed under Section 482 read with section 397/401 Cr.P.C praying for setting aside and quashing the impugned order dated 02.03.2024 passed in Gossaigaon PS Case No. 14/2024 under section 379/411/34 IPC read with section 13(i) of the Assam Cattle Preservation Act by the learned SDJM, Gossaigaon, Kokrajhar, Assam whereby, the prayer for zimma of the vehicle bearing registration No. AS-01-QC-6467 seized in connection with the aforesaid case was rejected.

3. The present petitioner filed an application before the learned Sub Divisional Judicial Magistrate, Gossaigaon for zimma of the vehicle and during the aforesaid proceeding, the learned court below by its order dated 02.03.2024, considering the report submitted by the I.O that zimma of the vehicle cannot be granted as same is required for further proceeding of the case, rejected the prayer for zimma.

4. Be that as it may, according to the report the ownership of the vehicle has been identified. The vehicle is with the custody of the police for more than 3 months. The Hon'ble Apex Court in the case of ***Sunder Bhai Ambala Desai Vs. State of Gujrat*** 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:-

I. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized article should not suffer for it being remaining unused or by its misappropriation,

II. Whatever the situation be, it is of no use to keep the seized materials at police station for a long period.

III. It proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of it production before Court during trial.

IV. To protect the interest of the investigation/trial, the seized article can be handed over to the applicant by preparing detail and proper panchnama of such article, taking photographs of such article and a bond that such article would be produced if required at the time of trial/investigation. The Court for this purpose, may take proper security also.

5. Therefore, this Court while passing an order granting or refusing zimma under its revisional jurisdiction or the Magistrate in exercise of its power under Section 451 or 457 of Cr.P.C. is to follow the principles as laid down in the case of **Sundar Bhai Ambala Desai** (supra). However, the learned Magistrate has not dealt with such principle while passing the impugned order.

6. In view of the aforesaid settled propositions of law, this court, in the given facts of the present case is of the view that the seized vehicle be released to the registered owner subject to the following conditions:

I. The investigating authority shall prepare proper panchnama of the vehicle and take photographs of such vehicle and get the signature of the owner or representative of the

owner and the owner shall give a bond that such articles should be produced on issuing a bond of Rs.5,00,000/-.

II. The petitioner/owner shall not change the colour or structure of the vehicle and shall not also dispose of the vehicle till disposal of the case.

III. The petitioner/owner shall produce the vehicle before the I/O or before the Trial Court as and when called, for the purpose of investigation or trial.

7. With the aforesaid the present criminal revision petition stands allowed.

JUDGE

Comparing Assistant