

GAHC010040152024



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

Case No. : Crl.Pet./213/2024

M/S MADINA BASANALAYA
A PROPRIETORSHIP FIRM BEING REPRESENTED BY ITS PROPRIETOR
CHAN MIYA, SON OF LATE SHIRAJ MIA
SITUATED AT VILL- RAJNAGAR, WARD NO. 3,
TRILAMURA, DIST. KHOWAI, TRIPURA, P.S. KHOWAI, PIN-799205

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.Pet./245/2024

M/S SWARNALI TRADERS
A PROPRIETORSHIP FIRM BEING REPRESENTED BY ITS PROPRIETOR NILU
RANI PAUL

WIFE OF SUJIT PAUL

SITUATED AT VILL- KADAMTALA
DHARMANAGAR
NORTH TRIPURA

TRIPURA
PIN-799261

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A M BORA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of Hearing : **14.03.2024**

Date of Judgment : **14.03.2024**

JUDGMENT & ORDER (Oral)

Heard Mr A. M. Bora, learned Senior counsel assisted by Mr V. A. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 read with 451 and 457 of the Cr.P.C for giving custody of the seized areca nuts which were seized by the Government Railway Police at Guwahati Railway station on 17.02.2024 on the basis of an FIR which was registered on 18.02.2024 as G.R.P.S Case No. 53/2024 under Sections 120(B)/379/411/410/413/420/468/471 of the IPC.

- 3.** The case of the prosecution is that the jurisdictional ASI, G.R.P.S lodged an FIR alleging inter alia that on 17.02.2024 at around 6:15 p.m, upon receipt of secret information from reliable sources, searched the luggage break No. 225869/C(front side) of train No. 12504 DN, SMVT Bengaluru Humsafar Express on its arrival at the Guwahati Railway Station.
- 4.** It is further the case of the prosecution that during search, 347 numbers of gunny bag were unloaded from the aforesaid luggage break weighing about 65 kgs. per bag totalling to 22,555 Kgs.
- 5.** It is the further case of the prosecution that on preliminary investigation, it was suspected that the seized areca nuts were of foreign origin and were meant to be smuggled and illegally transported by unknown culprits without paying any government authorities and without any valid document.
- 6.** Accordingly a search and seizure list was prepared.
- 7.** Thereafter, a case was registered as G.R.P.S. Case No.53/2024 under Sections 120(B)/379/411/410/413/420/468/47 of Indian Penal Code.
- 8.** Mr A. M. Bora learned, Senior counsel appearing for the petitioner submits that the petitioner in the course of the business had legally purchased Indian Local Dried Areca nuts from one Md. Manir Uddin who is a trader duly recognized by the Department of Horticulture and Soil Conservation, Agartala, Government of Tripura. He further submits that the petitioner bought 10,000 kgs of Local Dried Areca nuts on 02/01/2024 and 10,000 kgs on 29/01/2024 from Suhana Enterprise, the proprietor of which is Md. Manir Uddin and accordingly paid the GST on both the purchases.
- 9.** He further submits that the petitioner sold 11970 kgs. of the said areca nuts to one H K Siddig Traders of Kadur, Karnataka on 16/02/2024 and paid the

GST for the said goods and that the goods were to be transported by rail and road respectively.

10. He further submits that the petitioner in order to transport the Areca Nuts booked the Areca Nuts first by road from Khowai to Agartala Railway Station and then in the cargo of Train No. 12504 DN, SMVT Bengaluru Humsafar Express, from Agartala to Karnataka on 16/02/2024. He further submits that the parcel van of the train was being handled by R.M. Logistics.

11. He further submits that when the train reached Guwahati Railway Station on 17/02/2024, the police officials of the Government Railway Police offloaded the goods suspecting them to be smuggled foreign areca nuts.

12. He further submits that the petitioner states that the seized areca nuts had been procured from a Government authorized trader of Tripura and was sold by the petitioner by paying all requisite taxes to the Government.

13. He further submits that the petitioner is a respected businessman of Tripura and is not involved in any illegal activities such as smuggling or any criminal conspiracy.

14. He further submits that although the petitioner has not committed any illegality or crime while doing its business of selling and transportation of areca nuts, the police officials of GRPS has without any reason seized the areca nuts.

15. He accordingly submits that the petitioner has filed the instant application praying for grant of custody of 171 bags of seized areca nuts weighing around 70 kgs. each, i.e 11,970 kgs in total.

16. Mr. P. Borthakur, learned Additional Public Prosecutor on the other hand strongly opposes the prayer for grant of subject custody.

- 17.** He submits that the Case Diary received indicates that sample of the seized articles has been sent to the Food Analysis to the Government of Assam, Bamunimaidan, to ascertain whether the seized articles were fit for human consumption or not. Further, sample has been also sent to the District Agriculture Officer, Kamrup to ascertain the origin of the seized articles.
- 18.** He further submits that the investigation is in preliminary stage and the aforesaid reports are yet to be received.
- 19.** I have heard the submissions made at the Bar and have perused the materials available on record.
- 20.** Before advertng to the merit of the case, it would be necessary to refer to the relevant provisions of the law.
- 21.** Sections 451 and 457 of the Cr.P.C is reproduced hereunder for ready reference.

“451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—(a) property of any kind or document which is produced before the Court or which is in its custody; (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.—(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may

make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

22. It appears from the reading of the aforesaid provisions that the powers envisaged under Sections 451 and 457 of the Cr.P.C are that of the Criminal Court and the Magistrate Court respectively. Condition precedent for the exercise of power under Section 451 Cr.P.C is that the property must be produced in Criminal Court or is in custody of the Criminal Court during any enquiry or trial. Therefore the power is limited to property of any kind or document produced before the Criminal Court or in custody of Criminal Court. Hence, the Criminal Court have no jurisdiction to direct disposal of property without production before the said court, physical or symbolic.

23. However, when goods has not been produced before the Criminal Court and no enquiry or trial has commenced, a petition under Section 457 Cr.P.C can be filed for disposal of such property before the Magistrate Court. The power under Section 457 is at the stage of investigation. Section 457 is in two parts. Firstly, the factum of seizure has to be reported before the Magistrate by the Investigating Officer. Upon such report, if the Magistrate is satisfied that such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate shall pass appropriate orders either for disposal or delivery of such properties in accordance thereof. Therefore, the word "not produced before a

Criminal Court” appearing therein does not mean production before the Magistrate Court by the police while reporting such seizure of property.

24. The Division Bench of this court in the case of the “***State of Assam and Anr. Vs Ram Sankar Maurya***” reported in “***2023 Supreme (GAU) 197***” while deciding the reference as whether pending investigation, seized articles can be released by the Court, by exercising jurisdiction, either under Section 451 or under Section 457 of the Cr.P.C, answered the reference by holding that at the investigation stage, seized articles cannot be released by a court under Section 451 Cr.P.C; however under Section 457 Cr.P.C, the Criminal Court has jurisdiction to give custody of seized articles at the stage of investigation, when those seized property are not produced before the court. Paragraph 44 of the aforesaid judgement is reproduced herein for ready reference.

“44. the fact that the Hon’ble Supreme Court has given a direction to the learned Criminal Court to consider release of seized property/articles at the investigation stage under Section 457 Cr.P.C, shows that Section 457 Cr.P.C can be applied by the Criminal Court at the investigation stage for release of seized property. The submission made by the counsel for the appellant that the judgement of the Apex Court in Ram Prakash (supra) did not deliberate on the scope of Section 457 Cr.P.C, for granting custody of seized property at the stage of investigation cannot be accepted by us. While different situations and circumstances could arise in respect of seized property, one situation that can arise is when the police submit a final negative report and the police authorities fail to release custody of the seized property in terms of Section 102 Cr.P.C in that case, there would be no remedy for the aggrieved person, except to approach the High Court under Section 482 Cr.P.C or Article 226 of the constitution, which would be a difficult task for people living in far flung areas and

those belonging to the weaker sections of society, in that event, Section 457 Cr.P.C would become redundant. After considering the decisions of the Apex Court and the various High Courts alongwith Section 457 Cr.P.C", we are of the considered opinion that the words "and such property is not produced before a Criminal Court during an inquiry of trial", appearing in sub-Section (1) of Section 457 Cr.P.C, cannot be restricted to mean that the stage of inquiry or trial is a condition precedent, for a Court to have jurisdiction for exercising power under Section 457 Cr.P.C. at the investigation stage. We are of the view that the words "such property is not produced before a Criminal Court during the inquiry or trial" appearing in Section 457(1) Cr.P.C would have to considered to be a reference to a stage of investigation and not the stage of inquiry or trial. Further, we are bound by the decision of the Apex Court in Ram Prakash Sharma (supra), in terms of Article 141 of the Constitution of India, as it is the mandate of the Constitution that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Also, in the case of Anil Kumar Neotia Vs. Union of India & Others, reported in AIR 1988 SC 1353, it has been held that the High court cannot questions the correctness of the decision of the Supreme Court, even though the points stated before the High Court were not considered by the Supreme Court."

25. It is abundantly clear from the aforesaid decision that the powers provided under Section 457 of the Cr.P.C to the Magistrate is at the stage of investigation and not the stage of enquiry or trial.

26. Reference is also made to the decision of the Division Bench of the High Court of Allahabad in the case of "**Ajai Singh vs Nathi Lal**" reported in "**1978 0 CrLJ 629**". Paragraph Nos. 9 and 10 is reproduced hereunder for ready reference;

“(9) THE cardinal principle of interpretation of statutes is that words should be read in their ordinary, natural and grammatical meaning unless such a reading leads to absurdity. If the words are susceptible of another meaning, the Court may adopt the same. In the expression such property is not produced before a Criminal Court during inquiry or trial the legislature has used present indefinite tense in passive voice. As such it is not permissible to interpret them to mean may not be produced in Court in an inquiry or trial at any time or as will not be produced in an inquiry or trial. So that the Magistrate has to wait until an enquiry or trial is held by a Criminal Court and the property is actually not produced in that Court. The words is not produced etc have reference to the point of time when the Magistrate to whom seizure has been reported is called upon to make an order for disposal of such property. At the relevant time i.e. when he has to make an order for disposal of property, the Magistrate has to ascertain if the property is produced or not in a Criminal Court during an inquiry or trial. If it is produced, he will have no jurisdiction to deal with it. In case it is not produced before a Criminal Court during an inquiry or trial, he will make an order for its disposal in the prescribed manner.

(10) A Magistrate may have to exercise jurisdiction under Section 457 in different situations and circumstances, A person whose property has been seized may apply to the Magistrate for its release while the investigation is still in progress and as such before the commencement of an inquiry or trial and before an occasion to produce the seized property before a Criminal Court arises. Such a situation arose in the case reported in Ambika Roy v. State of West Bengal 1974 Cri LJ 1002 (Cal). A Division Bench of the Calcutta High Court held (at pp. 10041005):

On a consideration of the relevant provisions of the Code and in the Right of the principles of interpretation of statutes, it is abundantly clear that Section 457 of the Criminal P. C. 1973 is hi the context of the earlier provisions laid down in Chap. XXXTV and should not be construed bereft of sttch context. The words "such property is not produced before a Criminal Court during an inquiry or trial" merely refer to the stage of investigation and not the stage of inquiry or trial. If the property is produced in the Criminal Court dutms an inquiry or trial, Section 451 of the new Code would apply and not Section 457. The words relied upon by the Chief Metropolitan Magistrate, Calcutta, therefore do not constitute a bar but a condition lwecedent, not a disqualification but a qualification; and not an exception bot an essential ingredient forming title mainspring of such application. The learned Chief Metropolitan Magistrate, Calcutta, has misconstrued the said words to and ultimately that "in this case there is non-production but the non-production is not during trial but prior to trial." The learned Magistrate proceeded

on the purported footing that the inclusion of the aforesaid words in the statute required in the first place the non-production of such property as opposed to production; and secondly that the factum of such nonproduction must be during an inquiry or trial. It is abundantly clear, however, that ultimately there is no cloud and the legislature in its wisdom merely used the said words in order to differentiate the various stages, viz. the stages of an inquiry or trial, completion of trial and that of investigation etc. In this particular case it appears from the records, that the conditions precedent enjoined in Section 457 of the Criminal P.C, 1973 have been duly fulfilled viz. that the factum of seizure has been reported to a Magistrate under the proviso of this Code and that the property produced has not been produced during an inquiry or trial but at the stage of investigation."

27. Therefore, it is abundantly clear that the power of the Magistrate under Section 457 Cr.P.C is during the stage of the investigation. Thus when the factum of seizure had been reported to the Magistrate, and it was not produced during any enquiry or Trial but at the stage of investigation, the essential ingredients of Section 457 Cr.P.C have been fulfilled and therefore the case is within the ambit of Section 457 Cr.P.C.

28. In the present case, it appears from the case diary placed before the court that the Investigating Officer on 22.02.2024 produced the seized articles through the original seizure list along with the seized exhibits for seen. Further it appears that on 22.02.2024, the Court of Judicial Magistrate, Kamrup(M) has seen the same.

29. However, the petitioner instead of approaching the jurisdictional Magistrate Court, filed the instant petition under Section 482 Cr.P.C. It was submitted on behalf of the petitioner that since the seized items were produced by the I.O. before the Magistrate through the seizure list, Section 457 Cr.P.C. shall not apply as the same has been produced before the Court. The aforesaid contention is totally fallacious. As discussed above, Section 457 Cr.P.C. refers to the stage of the investigation.

30. As such, the power of giving custody of the seized items at the stage of the investigation is that of the Magistrate Court. The petitioner has the alternate remedy provided by the statute. The petitioner could have availed of such remedy, but choose not to. Therefore, this application under Section 482 Cr.P.C is not maintainable.

31. Reference is made to the decision of the Apex Court in the case of "**Arun Shankar Shukla vs State of Uttar Pradesh**" reported in "**1999 6 SCC 146**", wherein the Apex Court has held that inherent powers under Section 482 of Cr.P.C is not to be invoked in respect of any matter covered by the specific provision of the Code. Paragraph 2 of the said judgment is reproduced hereunder for ready reference:-

"2. It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code") has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by so called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary power to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well neigh settled that inherent power is not to be

invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. High Court has intervened at an uncalled for stage and soft-pedaled the course of justice at a very crucial stage of the trial.”

32. As such, without going into the contention raised by the petitioner on merit, the petition is dismissed on the ground that the petitioner has alternative remedy available under the Code for custody of the seized betel (areca) nuts.

33. Needless to clarify that as and when such application is made before the jurisdictional Magistrate Court, the same shall be proceeded in accordance with law.

With the aforesaid observations, this criminal petition stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant