

GAHC010022202024



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

Case No. : Crl.Pet./130/2024

SASHANKA BRAHMA
S/O LATE UTTAM CH. BRAHMA
R/O VILL- DHALAPARA
P.O.KHAGRABARI
P.S. KAJALGAN
DIST. CHIRANG (BTAD), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PP, ASSAM

2:THE INVESTIGATING OFFICER OF BONGAIGAON
P.S. CASE NO. 443/2023

BONGAIGAON POLICE STATION

BONGAIGAION-783380

DIST. BONGAIGAON
ASSAM

3:DISTRICT COMMISSIONER CUM COLLECTOR

BONGAIGAON DISTRICT.

4:SI(UB) SUKESH GHOSH
S/O SUKUMAR GHOSH
I/C NORTH BONGAIGAON POLICE PETROL POST

DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 27.03.2024

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State.

2. This is an application filed under Section 482 Cr.P.C. against the order dated 22.12.2023 passed by the learned Sessions Judge, Bongaigaon in CrI.Rev.No.25/2023 preferred by the petitioner against the order dated 20.10.2023 passed by the CJM, Bongaigaon whereby the petition filed by the petitioner for seeking zimma of an oil tanker bearing No. NL-01-AA-3255 was rejected.

3. The brief facts of the case is that on 18.10.2023, an FIR was lodged by one S.I. of Police of North Bongaigaon P.P. alleging *inter alia* that on receipt of an information from reliable source that illegal oil theft is going on at Goraimari area near Gupta Hotel. Accordingly, he along with staff reached near Gupta Dhaba and found that oil was ripping from a oil tanker bearing No. NL-01-AA-3255 by the driver Guddu Sah of the said vehicle with a green colour pipe in two different blue colour drums. On seeing the police party, they fled from the place. Accordingly, the police seized the oil tanker as per seizure list in presence of

witnesses.

4. On the basis of the said FIR, a case was registered vide Bongaigaon P.S. Case No. 443/2023 under Section 379/381/406 IPC r/w Section 7 of E.C. Act.

5. It is submitted by the learned counsel for the petitioner that the present petitioner is the registered owner of the aforesaid oil tanker having valid registration certificate, insurance certificate and home state authorization certificate. It is further submitted that when the investigating agency seized the tanker on 17.10.2023, the vehicle was loaded with fuel against the invoice of stock transfer dated 16.10.2023 issued by the Indian Oil Corporation Ltd.

6. According to the learned counsel for the petitioner, the investigating agency never informed the petitioner that the vehicle has been seized in connection with Bongaigaon P.S. Case No. 443/2023 and he was not furnished with the copy of seizure memo prepared by the investigating agency. It is further submitted that the petitioner as a registered owner of the oil tanker, on 20.10.2023, the petitioner filed a zimma petition before the CJM, Bongaigaon for taking zimma of said vehicle. But the learned CJM, rejected the said petition with an observation that as this is a case registered under section 7 of E.C. Act, the court of CJM has no jurisdiction to deal with the matter relating to zimma of vehicle (oil tanker) bearing registration no. NL-01-AA-3255. Thereafter, the petitioner has preferred a revision petition before the learned Sessions judge, Bongaigaon and the said revision petition was also rejected with an observation that as the confiscation proceeding is

pending, there being total bar of jurisdiction of the judicial authority to consider the zimma prayer of the petitioner.

7. Though a report was called for whether a confiscation proceeding has been initiated in connection with the seized oil tanker bearing No. NL-01-AA-3255 but the report is not received. It is also submitted by the learned counsel for the petitioner that the impugned order dated 22.12.2023, passed by the learned Sessions Judge, is bad in law, illegal and unsustainable and is liable to be set aside. No confiscation proceeding has been started by learned Collector concerning the above vehicle as the Collector can only initiate the confiscation proceeding on the basis of enquiry report filed by the authority and no enquiry has been yet initiated by the investigating authority till today.

8. It is further submitted that for the sake of argument if it is presumed that confiscation proceeding is pending before the collector under Section 6A of E.C. Act, even then seized vehicle cannot be confiscated as per sub-section (1) of section 6-A of E.C. Act, which provides that owner of such vehicle shall be given option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of essential commodities sought to be carried by such vehicle. It is also argued that seized vehicle is kept in police station and possibility of damage of vehicle cannot be ruled out. On these grounds, prayed for setting aside the impugned orders.

9. Learned counsel for the petitioner drew this Court's attention to a citation in Rama Shankar Yadav v. State of U.P., reported in (2010)

1 EFR 193. In the said case, it was held that even it is presumed that proceeding under section 6-A of E.C. Act are pending, release of vehicle should not be ignored. Furthermore, reliance is placed on G.Subbarama Naidu v. The Joint Collector, Chittoor Dist, AIR 1986 AP 82. In that case also, the same view has been expressed.

10. The learned Addl.P.P. submits that as no report is received that any confiscation proceeding is pending, the matter may be disposed of in accordance with law.

11. I have considered the submission made by the learned counsel for the parties.

12. Admittedly, no report is available from the concerned I/O regarding pending of any confiscation proceeding in connection with seized vehicle bearing No. NL-01-AA-3255. As per order dated 14.03.2024, it is reflected that case diary has been received and there was a prayer by the investigating officer before the Sessions Court, Bongaigaon to initiate a confiscation proceeding. As per Section 6-A of E.C. Act, 1955, only the Collector of the concerned district has the power to initiate a confiscation proceeding which reads as follows-

“S. 6-A. Confiscation of essential commodity-(1) Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is

instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [may order for confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity].....”

13. In the case of ***Sunderbhai Ambalal Desai v. State of Gujarat***, reported in ***(2002) 10 SCC 282***, it was held that powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purpose, namely-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation:
- 2. Court or the police would not be required to keep the article in safe custody;
- 3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
- 4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

14. In view of the above mandate, it is desirable that the claim of the petitioner for interim *zimma* of the seized vehicle is settled expeditiously and judiciously so as to prevent any damage to the vehicles and loss to the owners.

15. Therefore, it is provided that the learned Magistrate shall decide the matter regarding ownership of the vehicle and release the same to interim *zimma* as per procedure provided in Section 451 Cr.P.C. within a period of 2(two) weeks from the date of receipt of a copy of this order.

16. In order to enable the learned Magistrate to decide the claim of ownership of the vehicle afresh as per procedure, the petitioner shall file appropriate petition supported by relevant documents in original.

17. With the above directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant