

GAHC010053392024



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

Case No. : Crl.Rev.P./99/2024

SHAH NAWAZ ALAM
S/O LATE MAZIBUR RAHMAN @ MAZIBUR NAWAZ ALAM
R/O VILL AND P.O. BARMONIPUR
P.S. MIKIRBHETA
DIST. MARIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M HOQUE

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

18.03.2024

Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. D. Das, learned APP for the State.

2. This is an application under Sections 397/401 r/w Section 482 of the CrPC, 1973 assailing the impugned Order dated 13.02.2024 passed by the learned Sub-Divisional Judicial Magistrate (SDJM) (M) Gohpur, Biswanath arising out of Gahpur PS Case No. 204/2023 registered under Section 120(B)/379 of the IPC r/w Section 11(1) (a)(b)(c)(d) of Prevention of Cruelty to Animal Act whereby the zimma petition filed by the petitioner for custody of the vehicle bearing Registration No. AS-05 C 1965 was rejected.

3. The case of the petitioner is that the petitioner is the registered owner of the seized vehicle and his vehicle was seized in connection with the aforesaid case alleged to have been used for transporting illegal cattle. The petitioner has filed an application before the Court of SDJM(M) for custody of the said seized vehicle. The Court of SDJM(M) Gohpur by Order dated 13.02.2024 rejected the said Zimma application.

4. It appears that the driver of the vehicle is absconding and because of the same, the I.O has submitted a report that the seized vehicle shall not be released to the registered owner. Reference is made to the decision of the Apex Court in the case of "**Sunderbhai Ambalal Desai vs State of Gujarat**" reported in **(2002)10 SCC 283**, wherein paragraph 7, 8, 9, 10 and 21 of the aforesaid judgment be re-produced herein for ready reference:-

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, 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 the 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. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC

(Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

9. *The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.*

10. *To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.*

21. *However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”*

5. It is abundantly clear from the aforesaid decision that the object of Section 451 CrPC is not to retain seized articles for longer time than what is absolutely necessary.

In the instant case, the Magistrate Court had rejected the Zimma prayer of the petitioner merely on the basis of the report of the Investigating Officer to the effect that the driver of the vehicle has been absconding. As such, the seized vehicle shall now be in the police custody for an indefinite period which is contrary to the object of Section 451 CrPC.

6. Evidently, the Magistrate Court has not taken into consideration the above parameters required under Section 451 for disposing of a Zimma application. Therefore, taking note of the aforesaid paragraphs laid down in ***Sunderbhai Ambalal Desai (supra)***, the Court is of the considered view that this criminal revision petition can be disposed of with a direction that the Magistrate Court shall dispose of the Zimma petition after calling a fresh report from the Investigating Officer.

7. Pursuant to such report the Magistrate Court shall dispose of the application afresh in accordance with law within a period of two weeks from the date of receipt of such report from the Investigating Officer.

8. Resultantly, the impugned Order dated 13.02.2024 passed by the learned Sub-Divisional Judicial Magistrate (SDJM) (M) Gohpur, be set aside and quashed.

With the aforesaid observations and directions, the criminal review petition stands disposed of.

JUDGE

Comparing Assistant