GAHC010059692023

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

Case No. : Crl.Pet./254/2023

ANOWAR HUSSAIN
S/O TOMSER ALI
VILL- DOTURI
P.S. BIJNI
DIST. CHIRANG, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ROFIQUL ISLAM
S.I. OF CHPAR P.S.
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : MR. P BORTHAKUR(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 03-05-2023

1. Heard Mr. A. Ahmed, learned counsel for the petitioner and Mr. P. Borthakur, learned Addl. P.P. for the State of Assam.

2. The petitioner Anowar Hussain has filed an application under Section 482 read with Section 401 Cr.PC and Article 227 of the Constitution of India challenging the order dated 22.02.2023 passed by the learned Judicial Magistrate, 1st Class, Bilasipara whereby the learned Court rejected the zimma of the petitioner relating to zimma of 400 bags of dry areca nuts (28 tones) seized in connection with Chapor P.S. Case No. 234/2022 under Sections 120B/379/420/468/471/34 IPC.

3. The FIR unfolds that the S.I. Rofiqul Islam received a secret information on 25.12.2022. He along with his staff proceeded towards the petrol pump situated at Dhirghat and found the truck loaded with supari (betel nuts). The Registration No. of the truck was AS-19-AC4459. The driver and the co-driver informed him that the betel nuts were loaded from a godown at Goalpara Matia area and the truck was proceeding towards Falakata of Coch Bihar but due to some mechanical defect, the truck was stopped near the petrol pump. The challans and the E-way bills produced by the driver and the co-driver were from A.R. Enterprise at Bijni under Chirang district. Thereafter on 26.12.2022, one requisition was sent to the Assistant Commissioner of Taxes to determine the genuineness of the challan and E-way bills but they were informed over phone that the E-way bills as well as the challans were fake and taxes tantamounting to lacs of rupees were being evaded in the process.

4. The learned Addl. P.P. has raised serious objection stating that the IO has sent a report that the District Agriculture Department, Dhubri has opined that suspected areca nuts does not match with the product of this locality and the areca nuts have been collected from illegal sources without proper documents and appears to be non-permitted species from Burma. The IO has also submitted a report that GST Tax payment receipt amounting to Rs. 11,49,060/-

was paid as penalty in the name of Vimal Das while Vimal Das was behind bars and it has come as a surprise as to how tax of seized goods in custody of police can be paid by a person who was still lodged in the jail and why was the driver paying the GST Tax instead of the service provider or the owner of the truck. It is also submitted that the accused are not co-operating with the investigation.

5. The petitioner had applied for zimma of the seized 400 bags of dry areca nuts which are perishable in nature but vide order dated 23.02.2023 the petition was rejected as the petitioner had failed to produce any documents regarding the purchase and procurement of the seized areca nuts. However, the truck bearing Registration No. AS-19-AC4459 was allowed to be handed over to the registered owner. The seized areca nuts are not fit for human consumption. The articles seized by the police were duly purchased by the petitioner. Annexure-4 series are the invoices of the procurement of the areca nuts by the petitioner. Annexure-7 is the token receipt of payment of tax to the tune of Rs. 11,49,060/- as penalty relating to vehicle bearing registration No. AS-19-AC4459.

6. The learned counsel for the petitioner has also filed additional-affidavit today. Through the affidavit it is submitted that regarding seizure, disposal, zimma and other procedures relating to areca nuts are mentioned in the SOP issued by the Additional Director General of Police, CID, Assam, Ulubari, Guwahati (CID-XI/SOP/Betel Nut/2021/3571 dated 16.09.2021. Even if the areca nuts are not fit for human consumption, there is no bar to allow zimma of the areca nuts to the owner as per Clause-15 of the SOP which is as follows:

"*It may happen that even if the seizures are unfit for human consumption there may be an owner or a claimant who may submit a plea before the court that they would use such betel nuts as raw material for manufacture of some non-edible products and that the same* *will not be used for human consumption. It that case Supdt. of Police should get the claim verified and report to the court. If the claim is genuine, then the court should be requested to impose strict conditions to ensure that the betel buts are used as per claim and not for human consumption."*

7. The learned counsel for the petitioner has also laid stress on the Annexure-A submitted along with the additional-affidavit which clearly reflects that a report has been sent by the IO that the areca nuts seized in connection with this case are suspected to be smuggled from Burma and the report of the District Agricultural Department reflects that the areca nuts are not legal products. It was also submitted through the report of the IO that as per record, the seized areca nuts belong to A.R. Enterprise, C/o. Anowar Hussain, who is the present petitioner. The Annexure-6 is dated 15.02.2023. Vide report dated 19.02.2023, the IO has submitted that the IO will abide by any direction of this Court relating to the areca nuts seized in connection with this case. The impugned order was passed on 22.02.2023. The petition No. 5397/2023 was filed by the petitioner with prayer for zimma of the areca nuts. The learned Judicial Magistrate, 1st Class has observed that –

"*The IO has submitted that the areca nuts are required for further investigation to find out and root out other smugglers involved in the case. The petitioner has prayed to ascertain his ownership to the seized areca nuts. He has also failed to produce any documents regarding purchase and procurement of the seized areca nuts."*

8. In view of the above observations, the learned Judicial Magistrate, 1st Class rejected the petition No. 5397/2023.

9. Now the petitioner has appended the invoice dated 19.12.2022, 20.12.2022, 22.12.2022 and 24.12.2023 marked as Annexure-4 and the copy of the E-way bill marked as Annexure-5. The Annexure-A appended to the additional-affidavit is the report of the IO which clearly reveals that the petitioner is the owner of the seized areca nuts.

10. I do not agree with the observation of the learned Magistrate that the areca nuts are required to be retained to find out and root out other smugglers of areca nuts. In the instant case the penalty has already been paid and Annexure-7 appended to the petition clearly reveals payment of Rs. 11,49,060/- as penalty of the seized areca nuts.

11. Thereby, the impugned order dated 22.02.2023 relating only to rejection of the prayer of zimma of the seized areca nuts to the custody of the petitioner is set aside. The petitioner is at liberty to submit a petition before the jurisdictional Court with prayer for zimma of the seized areca nuts with an undertaking that the seized areca nuts will not be used for human consumption and the learned Magistrate may pass an order directing the SP to consider the zimma of the seized areca nuts as per SOP for disposal of seized betel nuts (suprai) vide No. (CID-XI/SOP/Betel Nut/2021/3571 dated 16.09.2021.

In terms of the above, this petition is disposed of.

Send back the Case Diary.

JUDGE

Comparing Assistant