GAHC010263262018

IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram & Arunachal Pradesh)

Crl. Pet. 1196/2018

Abdul Kadir
S/O Nur Mohammad Sheikh
Vill- Kareya Pahar
P.S. Jogighopa
Dist. Bongaigaon,
Pin - 783382.

…………………………petitioner

VERSUS

The State of Assam and Anr.

Rep. By The PP, Assam

2.Sri Paban Barman

ASI of Police

S/O Late Saiya Ram Barman

Jorabat Police Out Post

P.S. Basistha

Dist.Kamrup (M)

Guwahati

Pin - 781022

…………………………respondents.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. A Roshid

Advocate for the Respondents : Mr. P. Borthakur, (Addl. P.P.)

Date of Hearing : 22.11.2022

Date of Judgment : **21.03.2023**.

JUDGMENT & ORDER (CAV)

1. Heard Mr. A. Roshid, learned counsel appearing on behalf of the appellant. Also heard Mr. P. Borthakur, learned Addl. P.P. for the State of Assam.

2. The petitioner, namely, Abdul Kadir has filed an application under Section 482 Cr.P.C. with prayer for quashing the FIR of Basistha P.S. Case No. 1419/2018, (G.R. Case No. 15840/2018) registered under Sections 120(B)/379/420 of the Indian Penal Code (IPC in short).

3. The FIR unfolds that the informant along with the ACP of Basistha Division, OC of Basistha P.S. and other police personnel held a Naka checking (check point) on 27.10.2018 at the Jorabat O.P. from 9 P.M. to 2 A.M. midnight. Trucks bearing registration no. i) HR-69-C-4660, ii) AP-16-TH-1199, iii) BR-06-GC-7481, iv) HR-69-C-7278, v) HR-68-B-7552, vi) AP-16-TH-9879, vii) AP-37-TD-5759, viii) AP-21-TZ-4343, ix) BR-09-GA-9833, x) AP-31-TG-9011, xi) AP-16-TH-8987 which were loaded with coal were approaching Meghalaya to Beltola, Guwahati. The drivers 1) Naga Raju, 2) Md. Atabar Rahman, 3) D. Suri Reddy, 4) Sandip, 5) Raju Ch. Lakhmaya, 6) Bala Ram Singh, 7) Bijendra Singh, 8) Molay Sarkar, 9) Chandeshwar Sah, 10) Kachi, 11) K. Paswan were stopped, with their trucks at the police outpost i.e. the Jorabat outpost where the Naka checking was held. The drivers were asked to produce legal documents regarding the loaded coal but they failed to produce the same. The loaded coal was transported by the trucks with the connivance of the truck owners and the coal mafia from Meghalaya. In this manner, theft of coal was committed and the Assam Government was cheated of the revenue due to the Government for transporting coal to other states. On suspicion that the coal was stolen property, the trucks were seized in presence of the witnesses.

4. Investigation commenced and the petitioners appeared before the Basistha P.S. on 28.10.2018 and the office of the ACP, Basistha Division, and submitted all the relevant documents regarding transportation of the coal through the trucks mentioned herein below:-

i) HR-69-C-7278

ii) AP-37-TD-5759

iii) AP-31-TG-9011

iv)AP-21-TC-4343,

v) BR-09-GA-9833

5. It is submitted on behalf of the petitioner that he is a businessman with his office at Kabaitary, Bongaigaon. The trade name is A.K.S. Traders. He purchases coal from Meghalaya, Byrnihat, Sonapur, for sale in different places. The competent authority issued a business certificate on 18.05.2018 with registration no. 18CMRPK2023G824. The certificate is marked as Annexure-1. On 24.10.2018, he approached to Assistant Commissioner of Police Basistha, Guwahati with prayer to allow him to purchase coal from 15 Mile, Byrnihat, Sonapur of Kamrup District. A copy of this application is marked as Annexure-2. The petitioner has purchased the coal from Byrnihat and loaded the same in five trucks mentioned above for transportation to Bihar. The petitioner has paid necessary taxes and other dues to the Government vide Tax invoice dated 27.10.2018 through E-way Bill. The petitioner has in his possession the requisite documents i.e Tax invoice, coal purchasing documents in Assam. The coal loaded in the aforementioned trucks is not stolen property. It is also submitted that when the police demanded the relevant documents in respect of transportation of coal, the drivers of the trucks mentioned above produced Tax invoice dated 27.10.2018 and E-way bills of Rs. 2,25,473.30 but the police did not accept any of the valid documents.

6. It is alleged that on the instigation of the ACP and the OC of Basistha P.S., the FIR was lodged by the informant, ASI Paban Barman on 28.10.2018 with the police at Basistha P.S. The petitioner appeared at the Basistha P.S. on 28.10.2018 and also at the office of the ACP at Basistha Division and submitted all the relevant documents which includes 500 Ton Coal, GST Tax invoice, E-way Bill, NGT Challan etc. The Officers destroyed the documents. The petitioner had an amount of Rs. 5,00,000/- in cash and the blank cheque of Rs. 5,00,000/- (signed) of Bandhan Bank. The Officers snatched away the above amount and cheque and assaulted the petitioner. The petitioner sustained grievous injury on his leg. The petitioner then met with a motorbike accident. He was undergoing treatment at Solaee Hospital, Goalpara. A copy of the prescription is annexed as Annexure-9. The OC threatened to kill the

petitioner if he would divulge about the incident and the OC forcefully procured the signature of the petitioner on a notice under Section 41 Cr.P.C in the police station itself. It is submitted that the trucks are lying in the open with the loaded coal and the petitioner is facing financial hardship. The petitioner has also filed a representation dated 01.11.2018 before the Director General of Police, Assam apprising him of the incident and seeking relief, but no steps were taken. This letter is marked as Annexure-10.

7. It is submitted on behalf of the petitioner that has no offence has been committed. He has prayed for quashing the FIR lodged against him with a foisted case.

8. Per contra, the learned Addl. P.P. has submitted that this incident involves transportation of coal by 11(eleven) trucks. The petitioner transported coal through five trucks. It is not a case, where only the petitioner is involved, but other accused are also involved. The Annexure-3 is the Tax invoice and E-way bills in respect of the total amount of coal transported through the trucks by the petitioner. The Annexure-2 is the application with prayer for purchasing coal from 15 Mile, Byrnihat, Sonapur but this application is without a receipt from the ACP. The FIR to the DGP marked as Annexure-10 is a computer typed copy of an FIR without any receipt.

9. Vide order dated 04.02.2021 of this Court, the Officer In-charge of Basistha P.S. submitted a comprehensive report as to the verification of the tax document pertaining to the coal carried by the aforementioned trucks. The Officer In-charge of Basistha P.S. submitted a detailed report. The report reveals that the seized vehicles have already been given in interim zimma and the case is under investigation. The Investigating Officer also sent a letter to the Superintendent of Taxes with a request to examine the E-way bills submitted in respect of the seized coal. A report was sent by Superintendent of Taxes, Guwahati, Unit-D on 27.09.2018 that the E-way bill attached with the documents of M/s A.K.S trading company bearing registration no. 811019988555 was verified and found that the detail matches with the copies attached but the invoices were issued by the dealer himself and not by any office.

10. In this case, the Annexure-3, 4, 5, 6, 7 clearly depicts that no single E-way bill matches with the number 811019988555.

11. It has been held in ***Som Mittal Vs. Government of Karnataka*** reported in ***(2008)***

3 SCC 753, wherein, it has been observed that:-

9. *At this stage we are not prepared to enter into the merits of the case on the basis of contentions urged by the respective counsel. Here are our reasons:*

In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

10. This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

12. I have given my anxious consideration to the submissions at the Bar with circumspection. The petitioner is alleged with an offence of evading payment of taxes to the Government by smuggling coal to different states. I have considered the magnitude of the offence. This is an offence against the society at large. The document submitted by the petitioner does not even substantiate his averments. I could decipher no malaise or malice by the investigation agency to settle scores with the petitioner. In view of my foregoing discussions, it is held that there appears to be no justified ground to invoke the inherent jurisdiction of 482 Cr.P.C. With the above observation, this criminal petition stands disposed of.

Send back the LCR.

JUDGE

Comparing Assistant