

GAHC010009652023



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

Case No. : Crl.Rev.P./14/2023

MOHAMMAD SAMI ULLAH
S/O MOHAMMAD RAHMAN
PERMANENT RESIDENT OF VIL- BHEROKHARA, P.O. PATIPUR
R/O DEKA COMPLEX, HIMALAYA TYRE SERVICE, BEHARBARI, NH-37, P.O.
AND P.S. BASISTHA GUWAHATI-781029
DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:SRI KUSHAL KONWAR
HC
GOHPUR
POLICE STATION

P.O. AND P.S. GAHPUR
DIST. BISWANATH
PIN-78416

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 20-01-2023

Heard Mr. S. Chauhan, learned counsel for the petitioner and Mr. P. Borthakur, learned PP for the State of Assam.

This is an application under Section 401 read with Section 397 Cr.P.C., 1973 has been preferred by the petitioner with a prayer to set aside and quash the impugned order, dated 07.12.2022 passed by the learned S.D. J.M. (M), Gohpur in Criminal Gohpur P.S. Case No.104/2022 (GR No.130/2022), whereby Zimma of the seized vehicle bearing registration No.AS-01-GC-6974 was allowed to the petitioner on execution of a Bank guarantee to the value of the seized vehicle along with one local and suitable surety subject to certain condition.

Mr. Chauhan, the learned counsel for the petitioner submits that he is the registered owner of a TATA LPT 3118 TC bearing registration No.AS-01-GC-6974 and the said truck was financed by Tata Motor Finance Limited and the truck was insured with United India Insurance Company Limited.

The brief facts of the case, in a nutshell, is that the petitioner was running from some financial constraint and gave his truck on rental basis amounting to Rs.1,20,000/- to Md. Raju Islam and Md. Gulajar Hussain and to that effect an agreement was signed between the petitioner and Md. Raju Islam and Md. Guljar Hussain on 11.05.2022 (Annexure-4). The insurance of the vehicle was to be extended by Md. Raju Islam and Md. Guljar Hussain but the same was not extended after 21.01.2022. Thereafter, on 07.07.2022, the informant who is an official (H.C.) of

Gohpur Police Station lodged an FIR before the O.C. of Gohpur Police Station alleging inter alia that one Truck moving from Lakhimpur side to Gohpur was carrying stolen cows. Accordingly, the informant was instructed by the O.C. to put a Naka checking and at around 6.50 AM, the said vehicle was coming from Hawajan side towards Biswanath Chariali, wherein, 22 cows were found. On interrogation to the Driver, he could not produce relevant documents with regard to the cows which he was carrying in the vehicle and thereafter, the said Driver, namely, Md. Akbar Alia and one Luhit Nath were arrested. Later on, they were handed over the O.C., Gohpur Police Station and the FIR was registered as Gohpur P.S.C ase No.104/2022 under Section 120(B)/379 IPC; read with Section 11 (a) (b) (c) (d) of Prevention of Cruelty to Animal Act; and read with Section 13 of the Assam Cattle Preservation Amendment Act.

The learned counsel for the petitioner further submitted that the petitioner has filed an application under Section 451 and 457 Cr.P.C. for custody of his vehicle bearing registration No. AS-01-GC-6974 before the learned SDJM (M), Gohpur on 05.11.2022 and the learned SDJM (M), Gohpur was pleased to pass the order, dated 07.12.2022 by allowing the petitioner to take custody of his vehicle on execution of a Bank guarantee equal to the value of the seized vehicle along with local and suitable surety subject to some condition. Therefore, the petitioner has preferred this revision petition against the condition of execution of Bank guarantee equal to the value of the seized vehicle and to set aside and quash the impugned order, dated 07.12.2022 passed by the learned S.D. J.M. (M), Gohpur in Criminal Gohpur P.S. Case No.104/2022 (GR No.130/2022).

It is further submitted by the learned counsel for the petitioner that the learned Court below passed the order of *Zimma* relying on a decision of this Court passed in Crl. Pet. 44/2022, dated 09.02.2022, wherein, this Court referring to the case of ***Sunderbhai Ambalal Desai-vs-State of Gujarat***, reported in ***(2002) 10 SCC 283*** granted the *Zimma* order. In the above case referred by this Court, the case was similarly situated one and it was registered under Section 379 read with Section 13 of the Assam Cattle Preservation (Amendment) Act, 2021 read with Section 11 of the Prevention of Cruelty to Animal Act, 1969 and accordingly, the *Zimma* of the said vehicle was allowed on furnishing a bond of 10,00,000/- with solvent surety of like amount. But the learned Court below though relied on the above referred judgment passed by this Court and also granted *Zimma* of the seized vehicle only on execution of bank guarantee equal to the value of the seized vehicle along with other conditions. But, the present petitioner is not in a position to execute any bank guarantee equal to the value of the seized vehicle and hence, he is not in a position to take *Zimma* of the seized vehicle though the learned Court below allowed his *Zimma* prayer for the vehicle. Accordingly, vide this revision petition, the petitioner sought for modification of the order, dated 07.12.2022 passed by the learned SDJM (M), Gohpur and prayed to incorporate the condition of furnishing bond instead of furnishing a bank guarantee as per the condition of the order passed by the learned SDJM (M), Gohpur.

It is further submitted by the learned counsel for the petitioner that the SDJM (M) Gohpur passed the order without considering the financial condition of the petitioner and also did not consider the fact that the

seized vehicle of the petitioner is financed by Tata Motors Finance Limited and he is not in a position to furnish any bank guarantee equal to the value of the seized vehicle.

In this context Mr. P. Borthakur, the learned PP submits that the learned SDJM (M) Gohpur committed no error or illegality while passing the order of *Zimma* with a condition to furnish a bank guarantee. He further submits that as per Section 11 (5) of the Assam Cattle Preservation Act, 2021 empowers the Court to release the seized materials including vehicle/conveyance except the cattle on furnishing of a bank guarantee equal to the value of the material or vehicle/conveyance except, to the satisfaction of the Court and thus, the learned SDJM (M) Gohpur rightly passed the order for furnishing a bank guarantee while passing the order of *Zimma* and hence, there is no need of interference by this Court to the order passed by the learned Court below.

After hearing the submission of learned counsel for both the sides, I have perused the case record and it is seen that the learned SDJM (M) Gohpur passed a detailed order while disposing the *Zimma* petition filed by the present petitioner and passed the order of *Zimma* with a condition to furnish a bank guarantee equal to the value of the seized vehicle along with other conditions. The judgment which is relied by the learned Court below is not similarly situated where the order was passed by this Court after rejection of the *Zimma* prayer by the learned Magistrate but in the instant case, it is seen that the learned Court below granted the *Zimma* order considering the order passed by this Court as well as considering the

judgment of ***Sunderbhai Ambalal Desai-vs-State of Gujarat***, reported in ***(2002) 10 SCC 283*** while dealing with the *Zimma* petition and complying the provision of 11 (5) of the Assam Cattle Preservation Act, 2021 passed the order for *Zimma* of the vehicle with some terms and condition along with the condition for furnishing of a bank guarantee equal to the value of the seized vehicle. Thus, it is seen that there is a special provision of allowing *Zimma* of the vehicle as per the said Act and Section 11 (5) empowers a Magistrate to allow the *Zimma* of the vehicle and other goods except the cattle on furnishing a bank guarantee equal to the value of the material or vehicle/conveyance except to the satisfaction of the Court.

Thus, it is seen that the impugned order, dated 07.12.2022 passed by the learned SDJM (M), Gohpur in GPR P.S. Case 104/2022 (GR No.130/2022) do not suffer from any illegality, propriety and or correctness to make any interference nor the condition of furnishing bank guarantee is needed to be modified.

Resultantly, this petition is being devoid of merit and the same stands dismissed.

JUDGE

Comparing Assistant