

GAHC010015262023



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

Case No. : Crl.Rev.P./28/2023

SOFIQUUL ALOM CHOUDHURY
S/O ABDUL MOTIN CHOUDHURY,
VILL.- BIDYAPARA PT- 2, A M CO ROAD,
P.S.- DHUBRI,
DIST.- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR. T CHUTIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.02.2023

Heard Mr. T. Chutia, learned counsel for the petitioner. Also heard Ms. S.H. Bora, learned APP appearing for the State.

2. This revision under section 397/401, read with section 482 Cr.P.C. is

directed against the order dated 11.01.2023, passed by the learned Additional Chief Judicial Magistrate, Nagaon, in connection with Rupohihat P.S. Case No. 388/2022. By the said order, the prayer of the petitioner for granting custody of the truck bearing registration no. AS-25-EC-2165 was rejected.

3. The learned APP has produced the case diary and has opposed the prayer made in this petition on the ground that the vehicle in question has been attached and the same is required for further investigation. In this regard, she has placed reliance on the note of the I/O, which has been produced along with the case diary.

4. On perusal of the case diary, it appears that the same contains cattle sale/purchase receipt of 23 nos. cattle, copy of a fitness certificate of cattle, issued by the Veterinary Officer, State Veterinary Dispensary, Sissiborgaon, Dhemaji, which is valid for cattle transport through road vehicles giving description of the 23 cows transported along with their relevant particulars, together with other particulars, which was necessary for transportation of cattle. The case diary also contains copy of registration certificate bearing no.AS-25-EC-2165, wherein it is mentioned that the body type is live stock, goods permit in respect of the said vehicle etc.

5. The learned counsel for the petitioner has submitted that the additional cow, which was being transported, is a calf.

6. On a perusal of the case diary, it is seen that there is nothing to show that the I/O has found that any of the documents, which are produced by the petitioner in respect of the vehicle are fake.

7. Under such circumstances, notwithstanding the learned APP has opposed the prayer for custody, the Court finds that out of 24 cattle being

transported, the petitioner has been able to demonstrate that he has necessary documents in respect of the 23 cattle for being transported through the truck in question.

8. Under such circumstances, the Court is of the considered opinion that merely because the vehicle in question has been attached by the police is not a sufficient reason not to grant custody of the vehicle of the petitioner as the vehicle is a commercial vehicle, which affects the life and livelihood of the petitioner. As the vehicle in question is under attachment by the I/O, it would always be open to the I/O to call for the production of the said vehicle for investigation as and when required.

9. Accordingly, the Court finds that the impugned order dated 11.01.2023 is not sustainable on the ground that the I/O having seized the vehicle on 21.10.2022, had sufficient time to carry out any further investigation in respect of the vehicle. Case diary does not disclose that any worthwhile investigation was carried out in respect of the vehicle in question. Accordingly, this is a fit case for interference with the impugned order dated 11.01.2023.

10. Accordingly, the Court is inclined to set aside the impugned order dated 11.01.2023 passed by the learned Additional Chief Judicial Magistrate, Nagaon, in connection with Rupohihat P.S. Case No. 388/2022 and remand the matter back to the Court of learned Additional Chief Judicial Magistrate, Nagaon by restoring the proceedings relating to zimma petition nos.2401/2022 and 2402/2022 to file.

11. Accordingly, the learned Additional Chief Judicial Magistrate, Nagaon shall hear both sides afresh and pass appropriate orders considering the nature of investigation carried out so far by the I/O, without being influenced by this

order.

12. With the aforesaid observation, this revision petition stands allowed to the extent as indicated above.

13. The petitioner shall produce a certified copy of the order before the learned Additional Chief Judicial Magistrate, Nagaon and await further instruction from the said learned Court.

14. Case diary is returned.

JUDGE

Comparing Assistant